

NEWSLETTER

14 April 2025

BREAKING DOWN LAW NO. 2 OF 2025 ON THE FOURTH AMENDMENT TO LAW NO. 4 OF 2009 ON MINERAL AND COAL MINING: OPPORTUNITIES AND CHALLENGES AHEAD

Preamble

*Despite sparking intense debate, mainly due to concerns over its hasty nature and its exclusion from the National Legislation Program, the Bill of the new mining law was approved during the 13th Plenary Session of the Indonesian House of Representatives on 18 February 2025. It was subsequently enacted as Law No. 2 of 2025 on the Fourth Amendment to Law No. 4 of 2009 on Mineral and Coal Mining (**New Mining Law**) on 19 March 2025.*

The Government of the Republic of Indonesia (**Government**) conveyed that the New Mining Law is made to address the following key considerations:

- 1) various parties who have contributed to economic development have not been included in the mineral and coal mining business activities;
- 2) the potential of downstream activities, which are crucial for driving economic growth, has not been fully realized;
- 3) the necessity to provide legal framework to harmonize provisions that were previously only outlined in lower-level regulations.

In this Newsletter, we will explore the key provisions contained in the New Mining Law that are expected to bring about key changes in the regulation and management of Indonesia's mineral and coal resources, creating both opportunities and challenges for business actors and communities.



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Highlights of Changes

Expanding the Scope of Mining Rights Recipients

The New Mining Law introduces substantial changes to the scope of business entities eligible to obtain Mining Business Areas (*Wilayah Izin Usaha Pertambangan* or **WIUP**). Previously, only business entities, cooperatives, and individual companies could apply for mining rights. The revised provisions now expand this scope to include small and medium-sized enterprises (**SME**), and business entities owned by religious community organizations (*Ormas Keagamaan*). This expansion aims to foster broader economic participation and enhance community involvement in Indonesia's mining sector. By allowing SME and *Ormas Keagamaan* to engage in mining activities through its business entities, the government seeks to ensure that the economic benefits from natural resources extraction are more equitably distributed within the community.

The involvement of business entities owned by *Ormas Keagamaan* in mining is not entirely new. Article 83A of Government Regulation No. 25 of 2024 on the Amendment to Government Regulation No. 96 of 2021 on the Implementation of Mineral and Coal Mining Business Activities (**GR 25/2024**) already laid the groundwork for this initiative, although it was only limited to Special Mining Business Areas (*Wilayah Izin Usaha Pertambangan Khusus* or **WIUPK**). Under the provision the government can prioritize the offering of **WIUPK** to business entities owned by *Ormas Keagamaan* for the purpose of community welfare improvement. The **WIUPK** offered under this scheme primarily covers areas formerly designated as the Coal Contract of Work (**CCoW** or **PKP2B**) territory. This priority mechanism for **WIUPK** is now reinforced in Article 75 of the New Mining Law.

What sets the New Mining Law apart from **GR 25/2024** is the introduction of **SME** as an eligible recipient of mining rights and broader scope of rights granted to business entities owned by *Ormas Keagamaan*—extending beyond **WIUPK** to include metal mineral and coal **WIUP**.

Introduction of Priority Granting Mechanism for Metal Mineral and Coal WIUP

The New Mining Law introduces a significant shift in the granting of WIUP by adding a priority granting mechanism alongside the existing auction process. Previously, WIUP was granted exclusively through competitive auctions based on financial, technical, administrative, and environmental management capabilities. Under the new framework, three key concepts form the basis of the priority granting mechanism:

1. empowerment of cooperatives and SME, strengthening the economic functions of *Ormas Keagamaan*, and improvement of regional economies (**Communities Empowerment**);
2. interests of higher-education institutions (**Higher-Education Institutions' Interest**); and
3. In the context of *hilirisasi* – downstreaming (**Downstreaming**).

Please note that these three concepts of priority granting mechanism is not explicitly stipulated in the New Mining Law. These concepts are written to clarify the policy direction.

Priority Granting Mechanism for Communities Empowerment

Article 51 (1) and Article 60 (1) of the New Mining Law stipulates that the priority mechanism in granting metal mineral and coal WIUP is expanded, previously only to (i) Business Entities; (ii) cooperatives; or (iii) sole proprietorship, while now it can be given to (i) Business Entities; (ii) cooperatives; (iii) sole proprietorship; (iv) **SME**; or (v) **business entity owned by Ormas Keagamaan**.

By broadening access to mining rights to SME and *Ormas Keagamaan*, the Government aims to encourage local economic development and provide opportunities for entities that traditionally may not have participated in the mining sector. To implement the priority mechanism, the New Mining Law mandates the use of an integrated electronic licensing system managed by the Government.

The incorporation of a priority granting mechanism is a proactive step toward achieving national development objectives, yet it introduces potential challenges related to transparency and fairness. Compared to the competitive auction process, priority allocation may be perceived as less objective, creating a risk of preferential treatment if not supported by

clear and rigorous guidelines. To mitigate these risks, the formulation of comprehensive implementing regulations at the level of government regulation is crucial.

Priority Granting Mechanism for Higher-Education Institutions' Interest

Article 51A paragraph (1) and Article 60A paragraph (1) of the New Mining Law stipulates that the Central Government grants metal mineral and coal WIUP, on a priority basis to (i) **state-owned enterprises (SOE)**; (ii) **regional-owned enterprises**; or (iii) **private entities** for the interest of higher-education institutions.

To effectuate the purpose of granting interest to higher-education institutions, the relevant recipient that receives the priority WIUP shall allocate a portion of their profits to the higher-education institutions in accordance with the cooperation agreement between them. This financial arrangement is expected to support operational costs, reduce student tuition burdens, and improve educational facilities.

To ensure transparency and accountability, the Supreme Audit Agency (*Badan Pemeriksa Keuangan* or **BPK**) is mandated to conduct periodic financial audits of the involved enterprises and higher-education institutions. These audits aim to prevent misuse of funds, promote transparent fund management, and verify that the profits are utilized for enhancing educational access and quality.

Despite its potential, the regulation presents certain challenges and areas requiring further clarification. Notably, the law has not set out the procedure, form of cooperation or the eligibility criteria for the collaboration with higher-education institutions. It remains unclear whether all accredited higher-education institutions can participate or if certain restrictions will apply.

To fully realize the potential of this initiative, the Government should address this issue in government regulations that outline clear criteria, procedures, and compliance requirements. These regulations should ensure equitable access for higher-education institutions of varying sizes and locations, establish transparent profit-sharing mechanisms, and set measurable standards for effective collaboration.

Priority Granting Mechanism in the context of Downstreaming

Article 51B and Article 60B of the New Mining Law facilitates the priority granting of metal mineral and coal WIUP to (i) **SOE**; and (ii) **private entities** in the **context of downstreaming**. This measure aims to strengthen domestic value chains, attract investments, and improve Indonesia's standing in the global mining and energy sectors.

Article 51B paragraph (2) and Article 60B paragraph (2) of the New Mining Law emphasize several key considerations in prioritizing the granting of metal mineral and coal WIUP in the context of downstreaming efforts, namely, the area of the WIUP, local manpower empowerment, investment amount, and/or the increase of added value and supply chain fulfilment domestically and/or globally. The size of the WIUP area plays a vital role, as larger mining areas enable companies to maximize operational efficiency and benefit from economies of scale. Promoting local job creation is another priority, aligning with national labor market objectives and supporting economic inclusivity. The regulation also encourages significant capital investments to ensure the development of sustainable, technologically advanced downstream facilities. In addition, companies that can increase value-added processing and meet both local and global supply chain requirements will be favorably considered.

Introduction of Priority Granting Mechanism for WIUPK

The priority granting mechanism for WIUPK differs from that of metal mineral and coal WIUP. Unlike WIUP, the WIUPK priority granting mechanism does not limit the types of commodities covered.

Previously, WIUPK could only be granted to (i) SOE; (ii) regional-owned enterprises; or (iii) private entities. **SOE** and **regional-owned enterprises** were eligible to **receive priority offers** from the Minister, while private entities obtain Special Mining Business License (*Izin Usaha Pertambangan Khusus* or **IUPK**) through WIUPK auction, in the event that no SOE and regional-owned enterprises are interested in the priority offers.

The New Mining law indicates a change in the mechanism for granting IUPK, where Article 74 paragraph (1) stipulates that IUPK is granted by the Central Government by considering regional interests, whereas in the

previous Mining Law IUPK was granted by the Minister of Energy and Mineral Resources (MEMR).

Furthermore, under the New Mining Law, Article 75 paragraph (3) and (4) regulates that (i) SOE; (ii) regional-owned enterprises; (iii) **cooperatives**; (iv) **SME** and (v) **business entities owned by Ormas Keagamaan** are entitled to obtain WIUPK and IUPK through a priority granting mechanism. As regulated the same as before, private entities may only acquire WIUPK through an auction process. The granting of WIUPK is conducted by the Minister, who evaluates applicants based on their financial, technical, administrative, and environmental management capabilities.

Referring to the previous regulation, if the priority granting scheme and WIUPK auction are implemented in the same manner, one key point to highlight is that the inclusion of additional priority parties reduces the chances for private entities to obtain WIUPK, since it would require all entities which receive priority offer to first reject such offer. However, further details regarding this mechanism will only be regulated by forthcoming government regulations.

Priority Granting Mechanism for WIUPK: Higher-Education Institutions' Interest

Similar to the priority granting mechanism for metal mineral and coal WIUP, the WIUPK priority granting mechanism for **higher-education institutions' interest** can also be applied to (i) SOE; (ii) **regional-owned enterprises**; or (iii) **private entities**. In such cases, **private entities may obtain WIUPK and IUPK through the priority granting mechanism solely when it serves the interests of higher education.**

The New Mining Law outlines identical considerations, cooperative agreement requirements, and audit procedures for the WIUPK priority granting mechanism, aligning them with those applicable to WIUP in metal mineral and coal as explained above.

Stronger Spatial Utilization “Guarantee”

Previously, metal mineral and coal WIUP determination will be done after the spatial utilization criteria for mining activities have been fulfilled, while the New Mining Law sets out that in the event that there has not been any spatial utilization determination, then the metal mineral

and coal WIUP will be used as the basis for the spatial utilization determination for mining activities. This means that, now metal mineral and coal WIUP can be granted without the need to wait for the determination of the spatial utilization (generally determination of spatial utilization can only be done or reviewed every 5 years), accordingly this will expedite the process for the eligible parties in obtaining mining rights.

Additionally, Article 17A paragraph (3) and Article 31A paragraph (4) of the New Mining Law specifies that if changes occur in the use of space and areas in the metal mineral WIUP, coal WIUP and WIUPK that have already been determined, the metal mineral WIUP, coal WIUP, and WIUPK remain valid, and mining activities can still be conducted.

We believe that the changes in the New Mining Law in connection with spatial utilization are leaning more to the direction of providing certainty in carrying out mining activities in metal mineral and coal WIUP and WIUPK.

Regulatory Challenges Surrounding the Overlap of IUPs

Article 171B of the New Mining Law states that when this law comes into effect, the Mining Business License (*Izin Usaha Pertambangan* or **IUP**) that was issued before the enactment of this law and has issue regarding overlapping of its IUP or WIUP either partially or entirely will be revoked and returned to the state. The way this article is drafted creates legal uncertainties for:

1. **IUPs prior to the enactment of this law:** Even IUPs that were previously compliant may still be subject to revocation if the overlapping issue crystalized after the enactment of the New Mining Law, causing uncertainty for existing IUP holders.
2. **IUPs issued after the enactment of this law:** The law creates uncertainty for IUPs issued post-enactment, as it is unclear how overlap situations will be handled for these new licenses.

Further provisions regarding overlapping issues will be regulated in a Government Regulation, hopefully the Government Regulation can provide clarity on the criteria or cut-off date on the types and time period

of overlapping issue that will be determined as a basis for revocation of IUP.

Integrated Mining of Certain Types of Non-Metal Mineral Commodities

“Integrated mining” was introduced in Law No. 3 of 2020 (although the term was not specifically defined) which refers to mining activities that are integrated with processing and/or refining, or development and/or utilization activities. Through this concept, the Government provides incentives in the form of extended production operation period and guarantee of an extension period, to encourage and support domestic industries and add value to mining commodities.

Previously, only metal, mineral, and coal commodities can benefit from the integrated mining concept. Under the New Mining Law, Article 47 has been amended to include letter h, which adds certain non-metal mineral commodities (including amethyst, aquamarine, diamond, corundum, ruby, sapphire, topaz, tourmaline, as well as limestone, clay, and quartz sand for the cement and/or non-cement industry), that will also be eligible for this incentive, provided that they are integrated with domestic industrial processing facilities. The maximum period for these commodities is 20 years, compared to a maximum of 10 years for non-integrated mining, and there is also a guarantee of an extension of the period of 10 years for every extension.

Additional Prerequisite for Extension of Contract of Work and Coal Contract of Work

Prior to the New Mining Law, the consideration for extending Contract of Work (*Kontrak Karya* or **KK**)/PKP2B was based on Article 169A of Law No. 3 of 2020 and Article 111 of the MEMR Regulation No. 7 of 2020, by taking into account the increase of state revenue, investment scale, operational characteristics, production volume, and/or environmental capacity. Through the enactment of the New Mining Law, a new article has been introduced, i.e. Article 169A paragraph (1a) that stipulates the extension of KK/PKP2B to become IUPK can be done after an additional requirement has been satisfied, i.e. **environmental audit**.

Additionally, Article 169A now accommodates the revision made under the Constitutional Court's Decision No. 64/PUU-XVIII/2020, which annulled the guarantee of KK and PKP2B extension. Therefore, instead of using the phrase "extension guarantee is granted", Article 169A now uses the phrase "extension may be granted".

Domestic Market Obligation Requirement

The obligation to fulfil Domestic Market Obligation (DMO) for Mining Business License (*Izin Usaha Pertambangan* or **IUP**) or IUPK holders before exporting is now regulated under the New Mining Law, which holds a higher hierarchical status compared to the previous regulation, GR 25/2024.

Article 5 paragraph (3) of the New Mining Law states, "*To implement national interests, IUP or IUPK holders at the Production Operation stage are obliged to meet domestic needs before exporting and prioritize meeting the needs of SOE that control people's livelihood.*" Not only that it is now regulated at a higher level, but the requirement has also been specified, which requires IUP or IUPK holders to also prioritize the needs of SOE that control people's livelihood. The main objective of this policy is to maintain national energy resilience, stabilize domestic coal prices, and protect national strategic industry interests.

The New Mining Law also added sanctions as regulated in Article 151, where the Minister has the right to impose administrative sanctions to holders of IUP, IUPK, People's Mining Right (*Izin Pertambangan Rakyat* or **IPR**), Rock Mining License (*Surat Izin Penambangan Batuan* or **SIPB**), or IUP for Sales for DMO violations in the form of written warnings, fines, temporary suspension of part or all Exploration or Production Operation, and/or revocation of IUP, IUPK, IPR, SIPB, or IUP for Sales.

Additional Scope of Mining Services Business Activities

A Mining Services Business License (*Izin Usaha Jasa Pertambangan* or **IUJP**) is a license granted to conduct core mining services business activities related to the stages and/or parts of mining business activities. There is an additional scope of the types of mining services business activities regulated in Article 124 of the New Mining Law, which now includes the activity of "Processing or *Pengolahan*" alongside General

Survey, Exploration, Feasibility Study, Mining Construction, Transportation, Mining environment, Reclamation and Post-Mining, Mining safety, and Mining.

This opens a new opportunity for investors to just opt in acquiring IUJP rather than acquiring mining rights, as IUJP holders can now handle nearly all activities under a Production Operation IUP, except for trading and refining and that IUJP holders can carry out its activity without being tied down to a specific WIUP. Further clarification needs to be provided on the required license for carrying out "Processing" activity, since previously, referring to the elucidation of Article 104 paragraph (1) letter b, the party which carry out the Processing and/or Refining activities refers to a party which holds an industrial license, not an IUJP.

Closing Remarks

The enactment of the New Mining Law in Indonesia, as outlined, reflects the Government's efforts to develop the mining sector, enhance community participation, and drive growth toward the national vision of Indonesia Emas 2045. The hope is that by facilitating smoother access to mining permits and providing more certainty to investors, the law will attract more business activities, boost the mining industry, and ensure that the country meets its economic goals. However, many provisions remain contentious and ambiguous, raising doubts and concerns. Ultimately, the true measure of the law's success will depend on its implementation. Clear and effective implementing regulations, which must be stipulated within a maximum of 6 months from the date this New Mining Law comes into force, will be necessary to address concerns and ambiguities, ensuring the law's objectives are met without causing unintended negative consequences.

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Attachment: Table of Priority Granting Allocation

Priority Granting for Communities Empowerment							
Type of Mining Business License Area	SOE	Regional-Owned Enterprises	Sole Proprietorship	Cooperatives	SME	Business Entities Owned by Ormas Keagamaan	Private Entities
Metal Mineral WIUP	✓	✓	✓	✓	✓	✓	✓
Coal WIUP	✓	✓	✓	✓	✓	✓	✓
WIUPK	✓	✓	✗	✓	✓	✓	✗
Priority Granting for Higher-Education Institutions' Interest							
Type of Mining Business License Area	SOE	Regional-Owned Enterprises	Sole Proprietorship	Cooperatives	SME	Business Entities Owned by Ormas Keagamaan	Private Entities
Metal Mineral WIUP	✓	✓	✗	✗	✗	✗	✓
Coal WIUP	✓	✓	✗	✗	✗	✗	✓
WIUPK	✓	✓	✗	✗	✗	✗	✓
Priority Granting Mechanism in the context of Downstreaming							
Type of Mining Business License Area	SOE	Regional-Owned Enterprises	Sole Proprietorship	Cooperatives	SME	Business Entities Owned by Ormas Keagamaan	Private Entities
Metal Mineral WIUP	✓	✗	✗	✗	✗	✗	✓
Coal WIUP	✓	✗	✗	✗	✗	✗	✓