

MINISTER OF ENERGY AND MINERAL RESOURCES

ENERGY AND MINERAL RESOURCES MINISTER

REPUBLIC OF INDONESIA

NO.9/2017

ABOUT DIVESTMENT PROCEDURES AND DIVESTMENT SHARE PRICE FIXING MECHANISM ON
MINERAL AND COAL MINING BUSINESS

BY THE GRACE OF THE GOD

MINISTER OF ENERGY AND MINERAL RESOURCES OF INDONESIA,

Considering:

That to implement the provision of Article 99 of Government's Regulation No. 23/2010 about Mineral and Coal Mining Business which has been revised several times with Government Regulation No.1/2017 about the Fourth Amendment of Government Regulation No. 23/2010 about Mineral and Coal Mining Business, the minister needs to implement Energy and Mineral Resources Minister Regulation about Divestment Procedures and Divestment Share Price Fixing Mechanism on Mineral and Coal Mining Business;

Reckoning:

1. Law No. 25/2007 about Investment (Republic of Indonesia Official Gazette No. 67/2007, Additional Gazette No. 2724);
2. Law No. 40/2007 about Incorporated Company (Republic of Indonesia Official Gazette No.106/2007, Additional Gazette No. 4756);
3. Law No. 4/2009 about Mineral and Coal Mining (Republic of Indonesia Official Gazette No.4/2009, Additional Gazette No. 4959);
4. Government Regulation No. 23/2010 about Mineral and Coal Mining Business (Republic of Indonesia Official Gazette No.29/2010, Additional Gazette No. 5111), which had been revised several times, the last one was with Government Regulation No. 1/2017 about the Fourth Amendment of Government Regulation No. 23/2010 about Mineral and Coal Mining Business (Republic of Indonesia Official Gazette No. 4/2017, Additional Gazette No. 6012).
5. President Regulation No. 68/2015 about Ministry of Energy and Mineral Resources (Republic of Indonesia Official Gazette No.132/2015) which had been revised with President Regulation No. 105/2016 about Revision of President Regulation No. 68/2015 about Ministry of Energy and Mineral Resources (Republic of Indonesia Official Gazette No. 289/2016);

6. Minister of Energy and Mineral Resources Regulation No. 13/2016 about Organization and Working Procedures of Ministry of Energy and Mineral Resources (Republic of Indonesia Official Journal No. 782/2016).

DECIDED:

Enact: Energy and Mineral Resources Minister Regulation about Divestment Procedure and Divestment Share Price Fixing Mechanism on Mineral and Coal Mining Business.

CHAPTER I

GENERAL PROCEDURES

Article 1

In this Minister Regulation, the definition of:

1. Share Divestment is the amount of foreign party's share which must be offered to be sold to Indonesian party.
2. Mining is a part of mining activity to produce mineral and/or coal and its derivatives.
3. Mining Permit (IUP) of Production Operation, which will be named as IUP Production Operation in next sentences, is a business permit which given after the implementation of Exploration Mining Permit, which conducted before the production phase, is done.
4. Special Mining Permit (IUPK) of Production Operation, which will be named as IUPK Production Operation in next sentences, is a business permit which given after Special Exploration Mining Permit, which conducted before the production phase in special mining area, is done.
5. Mining Permit (IUP) of Special Production Operation to process and/or purify which will be named as IUP Special Production Operation to process and/or purify, is a business permit which given to a company to buy, transport, process, and purify, including selling the mineral or coal commodity which has being processed by the company.
6. Foreign Investment, which will be abbreviated as PMA is an investment activity to conduct business in Republic of Indonesia which conducted by foreign investor that use foreign fund only or join with local investor.
7. Domestic Investment is an individual of Indonesian Nationals, State-owned Company, Central or Regional Government which conduct an investment in Republic of Indonesia.
8. Central Government, which will be named as the Government in next sentences, is the President of Republic of Indonesia which carries the authority of Indonesian Government that assisted by Vice President and ministers as it meant in 1945 Constitutions.
9. Provincial Regional Government is the governor as a part of provincial government administrator which leads the execution of government affairs which becomes a part of provincial government.

10. Regency/City Regional Government is the regent/mayor as a part of regency/city government administrator which leads the implementation of government affairs which becomes a part of the authority of regency/city government.
11. State-owned Company which abbreviated as BUMN is a BUMN which conduct business in mining sector according to the rules of law.
12. Region-owned Company which abbreviated as BUMD is a BUMD which conduct business in mining sector according to the rules of law.
13. National Private Company is an incorporated business entity which capital or share holdings is 100% domestic owned.
14. Independent Evaluator is a company which evaluates that isn't related to bank and debtor to evaluate according to Indonesian Evaluator Code of Ethic and other rules which stipulated by Indonesian Evaluator Board, and has business permit of authorized institution.
15. Working Contract which abbreviated as KK is an agreement between Indonesian Government and Indonesian incorporated company involved in foreign investment to conduct mineral mining business activity.
16. Coal Mining Working Contract which abbreviated as PKP2B is an agreement between Indonesian Government and Indonesian incorporated company in order to conduct coal mining business activity.
17. Minister is a minister who holds governmental affairs in mineral and coal mining sector.
18. Director General is a Director General who tasked to hold policy formulation and implementation in developing, controlling, and supervising the mineral and coal activity.

CHAPTER II SHARE DIVESTMENT

Part One General

Article 2

- (1) Holders of IUP Production Operation and IUPKN Production Operation, must divest its share gradually since the fifth year of initial production, so that Indonesian part will have, at least, 51% (fifty one percent) of the share.
- (2) Since initial production, which mentioned in point (1), is counted since mining phase in production operation activity.
- (3) Holder of IUP Special Production Operation for processing and/or purifying, in foreign investment, is not obligated to conduct divestment.
- (4) The percentage of Gradual Divestment to Indonesian party, which was mentioned in point (1), must not be less than the following:

- a. 20% (twenty percent) in the sixth year;
 - b. 30% (thirty percent) in the seventh year;
 - c. 37% (thirty seven percent) in eight year;
 - d. 44% (forty four percent) in ninth year;
 - e. 51% (fifty one percent) in tenth year, from total share.
- (5) Indonesian party, which was mentioned in point (1) is consisted of:
- a. Government;
 - b. Provincial or Regency/City Regional Government;
 - c. State-owned and Region-owned company; or
 - d. National Private Company.
- (6) National Private Company, which was mentioned in point (5) letter d is a private limited company.
- (7) Holders of IUP Production Operation and IUPK Production Operation which will conduct divestment is prohibited to give loan for divestment to Indonesian party.
- (8) As for holders of IUP Production Operation and IUPK Production Operation, in fifth year since initial production, which share has been owned at least 51% (fifty one percent) by domestic investor, is not obligated to conduct divestment.
- (9) If the share of IUP Production Operation and IUPK Production Operation are increased after the divestment, Indonesian party's share must not be diluted into a smaller amount from total share which obligated in point (4).
- (10) If Indonesian party isn't using its right to buy the share which comes from increasing share as mentioned in point (9), holders of IUP Production Operation or IUPK Production Operation is obligated to offer its share to Indonesian party by paying attention to share composition of Indonesian party, according to divestment obligation.

Article 3

Holders of IUP Production Operation and IUPK Production Operation are prohibited to hypothecate the share which obligated to be divested.

Part Two

Procedures of Divestment

Article 4

Holders of IUP Production Operation and IUPK Production Operation are obligated to offer gradual divestment to Indonesian party in 90 calendar days, at the latest, since its fifth year of production to:

- a. Government through Minister;
- b. Local Provincial and Regency/City regional government;
- c. State-owned and Region-owned company; and

d. National Private Company.

Article 5

- (1) The Government, through Minister, conducts an evaluation and share price negotiation of the offered divestment in 90 (ninety) calendar days since the offer is accepted as mentioned in Article 4 in order to reach deal of divestment's share price.
- (2) In evaluating, as mentioned in point (1), the Government, through Minister, can appoint Independent Evaluator.
- (3) If there are no deal in divestment share price, divestment is offered based on divestment price which calculated based on evaluation conducted by the Government, through Minister, which mentioned in point (1).

Article 6

- (1) The Government, through Minister, must give written answer of divestment offering in 30 calendar days at the latest since evaluation and price negotiation, which mentioned in article 5, ended.
- (2) If the government isn't interested or not giving answer in time period which mentioned in point (1), the offering is conducted hierarchically to Provincial Government, and Regency/City Government, State-owned Company and Region-Owned Company, and National Private Company.
- (3) Provincial and Regency/City Government which mentioned in point (2) is the Regional Province and Regional Regency/City government where the mining business activity takes place.

Article 7

- (1) Holders of IUPK Production Operation or IUPK Production Operation must offer divestment to Provincial Government and local Regency/City Government in 7 calendar days, at the latest since the Government stated uninterested or not giving written answer which mentioned in Article 6 point (1).
- (2) Provincial Government and local Regency/City Government must give written answer for the divestment offering as mentioned in point (1) in 30 calendar days at the latest since the date of the offering.

Article 8

- (1) If the Provincial Government and Regency/City Government don't give written answer as mentioned in article 7 point (2), holder of IUP Production Operation or IUPK Production Operation must offer divestment to State-owned Company and Region-owned Company through auction.

- (2) Holder of IUP Production Operation or IUPK Production Operation must offer share divestment to State-owned Company or Region-owned Company as mentioned in point (1) as a starting phase of the auction in 7 (seven) calendar days at the latest since the Provincial Government and Regency/City Government stated uninterested or don't give written answer as mentioned in article 7 point (1).
- (3) State-owned Company and Region-owned Company must give written answer of the divestment offering in 30 (thirty) calendar days since the offering date.
- (4) If the State-owned Company or Region-owned Company interested in the divestment, it must deliver a written answer to holder of IUP Production Operation or IUPK Production Operation which includes the following:
 - a. Divestment share price offering in enclosed and sealed envelope;
 - b. Article of Incorporation of State-owned Company or Region-owned Company which legalized by the authority.
 - c. Profile of State-owned Company or Region-owned Company
 - d. A statement which shows willingness to be responsible of mineral or coal business development which operated by IUP Production Operation or IUPK Production Operation; and
 - e. Tax ID number.
- (5) Envelope unsealing of divestment share price offering is conducted at the 30th (thirtieth) day since the date of the offering which mentioned in point (2) and must be attended by auction participants.
- (6) Holder of IUP Production Operation or IUPK Production Operation decides the auction winner based on the highest price and paying attention to the terms which mentioned in point (4) letter b to e.
- (7) If there's only 1 (one) State-owned Company or Region-owned Company which states its interest as mentioned in point (2), the auction is still conducted.

Article 9

- (1) If State-owned Company or Region-owned Company is not interested or doesn't give written answer as mentioned in Article 8 point (3), holder of IUP Production Operation or IUPK Production Operation must offer divestment to National Private Company through auction.
- (2) Holder of IUP Production Operation or IUPK Production Operation obligated to offer divestment openly to National Private Company as mentioned in point (1) as the starting phase of the auction in 7 (seven) calendar days at the latest since State-owned Company and Region-owned Company stated uninterested or if it don't give written answer as mentioned in Article 8 point (3).

- (3) National Private Company must give written answer of the divestment offering as mentioned in point (2) in 30 (thirty) calendar days at the latest since the date of the offering.
- (4) If the National Private Company interested in the divestment, it must send a letter to the IUP Production Operation or IUPK Production Operation which includes:
 - a. Divestment share price offering in enclosed and sealed envelope;
 - b. Article of Incorporation of National Private Company which shown all its capital or domestic share that has been legalized by the authority.
 - c. Profile of National Private Company
 - d. A statement which shows willingness to be responsible of mineral or coal business development which operated by IUP Production Operation or IUPK Production Operation; and
 - e. Tax ID number.
- (5) Envelope unsealing of divestment share price offering is conducted at the 30th (thirtieth) day since the date of the offering which mentioned in point (2) and must be attended by auction participants.
- (6) Holder of IUP Production Operation or IUPK Production Operation decides the auction winner based on the highest price and paying attention to the terms which mentioned in point (4) letter b to e.
- (7) If there's only 1 (one) National Private Company which states its interest as mentioned in point (2), the auction is still conducted.]

Article 10

- (1) If the share divestment offering to Indonesian party, as mentioned in Article 4 to Article 9, can't be done, divestment can be done through Indonesian stock market.
- (2) If the divestment through Indonesian stock market, which mentioned in point (1), can't be done, the divestment must be accumulated based on the obligation according to divestment procedure which mentioned in Article 4 to Article 10 point (1).

Part Three

Payment Procedure of Divestment

Article 11

- (1) Payment and the handover of share is being conducted within 12 (twelve) months, at the least, after the statement of interest from Indonesian party and written in divestment certificate which signed by both parties.
- (2) Payment and share handover, which mentioned in point (1) must be written in a record which signed by both parties.

Article 12

- (1) Holders of IUP Production Operation and IUPK Production Operation must submit share divestment report to the Minister through Director General with copy of letter submitted to governor and regent/mayor.
- (2) The report, which mentioned in point (1) must include event record and divestment certificate which signed by both parties.

Article 13

Holders of IUP Production Operation and IUPK Production Operation which has done conducting divestment must propose changing composition of share to Minister through Director General with copy of letter to regent/mayor.

Part Four

Procedures of Divestment Price Fixing

Article 14

- (1) Divestment share price from holder of IUP Production Operation or IUPK Production Operation which offered to Indonesian party is determined by the fair market value, and not omitting mineral or coal reserve by the time the divestment conducted.
- (2) Divestment share price, which mentioned in point (1) becomes:
 - a. The highest price for share divestment offered to the Government, Provincial Government, and Regency/City Government;
 - b. Highest price, which mentioned in letter a, is the basic price for divestment offering to State-owned Company, Region-owned Company, and National Private Company, which offered through auction.

CHAPTER III

TRANSITIONAL PROVISION

Article 15

When this Minister Regulation is in effect, the holders of KK and PKP2B which will conduct share divestment, must follow the regulation of this Minister Regulation.

CHAPTER IV

CLOSING

Article 16

When this Minister Regulation is in effect, Energy and Mineral Resources Minister Regulation No. 27/2013 about Procedures and Method of Divestment Share Price Fixing, and the Amendment of

Investment in Mineral and Coal Sector (Republic of Indonesia Official Gazette No.1122/2013) which related to procedures about divestment and share price fixing mechanism, is abolished and not in effect anymore.

Article 17

This Minister Regulation is in effect since the issue date.

So that everyone recognize, and order this Minister Regulation with its placement in Republic of Indonesia Official Gazette.

Stipulated in Jakarta

On 18th January 2017

Minister of Energy and Mineral Resources

Republic of Indonesia

Ignasius Jonan

Issued in Jakarta

On 20th January 2017

Director General of Law and Regulations

Ministry of Law and Human Rights

Republic of Indonesia

Widodo Ekatjahjana

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