

26 May 2011

**PRESIDENTIAL REGULATION RE
UNDERGROUND MINING IN PROTECTED
FORESTS**

**SUMMARY AND ANALYSIS
OF
KEY ARTICLES**

CHRISTIAN TEO PURWONO & Partners

LAW OFFICES

The Indonesia Stock Exchange Building
Tower II Floor 14 Suite 1405
Sudirman Central Business District
Jalan Jenderal Sudirman Kav. 52-53
Jakarta 12190
INDONESIA
TEL: [62-21] 515 0280 FAX: [62-21] 515 0281

TABLE OF CONTENTS

INTRODUCTORY NOTES 2

EXECUTIVE SUMMARY 3

SUMMARY AND ANALYSIS 4

1. GENERAL PROVISIONS 4

2. PROTECTED FOREST RENT USE PERMITS 4

3. EXPIRATION OF LICENSES AND THE RELINQUISHMENT OF PROTECTED FOREST AREAS 7

4. TRANSITIONAL PROVISIONS 7

INTRODUCTORY NOTES

This Summary & Analysis is intended as an overview only of Presidential Regulation No. 28 of 2011, dated 19 May 2011, re Underground Mining in Protected Forests (“**Presidential Regulation 28/2011**”).

This Summary & Analysis reflects our current understanding only of Presidential Regulation 28/2011 and is subject to change as that understanding develops and evolves.

Many of the points made in this Summary & Analysis are necessarily speculative in nature and subject to further clarification and confirmation. Accordingly, it would be prudent not to rely solely on this Summary & Analysis but, rather, to seek specific legal advice with respect to any issue concerning Presidential Regulation 28/2011 before making a material business decision regarding the same. **CHRISTIAN TEO PURWONO & Partners** would be pleased to assist you in this regard. Our contact details are set out below.

Address : **CHRISTIAN TEO PURWONO & Partners**
The Indonesia Stock Exchange Building
Tower II Floor 14 Suite 1405
Sudirman Central Business District
Jakarta 12190
INDONESIA

Telephone : [62-21] 515 0280

Facsimile : [62-21] 515 0281

Please contact, in the first instance, Mr. Bill Sullivan, Licensed Foreign Advocate (email: bsullivan@cteolaw.com and mobile: [62-21] 81585060978) or Ms. Nurvita Kristianty Siregar, Senior Associate (email: nksiregar@cteolaw.com and mobile [62-21] 818482777).

EXECUTIVE SUMMARY

1. Mining activities may be carried out in Protected Forest Areas by way of underground mining so long as this does not alter the main purpose and function of the Protected Forest Areas.
2. In order to be able to utilize Protected Forest Areas for underground mining activities, the holders IUPs/CoWs/CCoWs must apply for and obtain Protected Forest Rent Use Permit from the Minister of Forestry (“**MoFor**”).
3. MoFor will, first, issue an Approval in Principal License to the applicant for a Protected Forest Rent Use Permit, with a maximum initial validity period of 2 years but which is extendable, subject to evaluation by MoFor.
4. The Approval in Principal License will specify a number of obligations that must be fulfilled by the Protected Forest Rent Use Permit applicant in order to obtain the Protected Forest Rent Use Permit.
5. Once the Approval in Principal License holder fulfills the Approval in Principal License Obligations, MoFor will issue the Protected Forest Rent Use Permit.
6. Protected Forest Rent Use Permits will be initially granted for a maximum period of 20 years but be extendable in accordance with the validity period of the underlying IUPs/CoWs/CCoWs and subject to evaluation by a Monitoring & Evaluation Team.
7. Protected Forest Rent Use Permits are transferable subject to MoFor’s prior written approval.
8. Protected Forest Rent Use Permit holders are prohibited from carrying out underground mining activities which may cause land surface subsidence or permanent change to the purpose or function of Protected Forest Areas.
9. A Protected Forest Rent Use Permit may be revoked by MoFor if its holder (i) does not fulfill certain obligations under the Protected Forest Rent Use Permit or (ii) violates Presidential Regulation 28/2011.

SUMMARY AND ANALYSIS

1. GENERAL PROVISIONS

Legal Basis	Remarks
Articles 1 - 3	<p>A. “Protected Forest” means a Forest Area which has the main function of providing life support system protection in managing water systems, preventing floods and the intrusion of sea water, facilitating erosion control, and maintaining soil fertility.</p> <p>B. “Underground Mining” means underground mining activities which are carried out by way of constructing (i) shafts (ii) tunnels or (iii) dead end tunnels, including facilities and infrastructure in support of production activities, within the Protected Forest Area.</p> <p>C. Mining activities may only be carried out in Protected Forest Areas by way of Underground Mining which does not alter the main purpose and function of the Protected Forest Areas.</p> <p>D. In order to be able to utilize Protected Forest Areas for Underground Mining activities, a party must obtain licenses from MoFor, which will be granted in 2 stages as follows:</p> <p style="margin-left: 40px;">(a) Approval In Principle License; and</p> <p style="margin-left: 40px;">(b) Protected Forest Rent Use Permit.</p>

2. PROTECTED FOREST RENT USE PERMITS

Legal Basis	Remarks
Articles 4 - 12	<p>1. <u>License Application Procedures</u></p> <p>A. Protected Forest Rent Use Permits for Underground Mining activities must be applied for by the authorized representative of the applicant which must be in the form of an Indonesian legal entity holding the necessary mining license (<u>i.e.</u>, IUP) or contract (<u>i.e.</u>, CCoW and CoW) (“Mining Licenses & Contracts”) (“Rent Use Permit Application”).</p> <p>B. The Rent Use Permit Application must be in writing and submitted to MoFor, with copies to Minister of Energy and Mineral Resources (“MoEMR”), Minister of Environment (“MoE”), relevant Governors and Regents/Mayors, together with the following supporting documents:</p> <p style="margin-left: 40px;">(a) feasibility study of the proposed mining activities based on exploration results and adjusted to reflect the function of the relevant Protected Forest Area as approved by the relevant Governor or Regent/Mayor in accordance with its respective authority after obtaining technical consideration from</p>

Legal Basis	Remarks
	<p>MoEMR;</p> <ul style="list-style-type: none"> (b) approval by the Minister of Environment (“MoE”) of environmental feasibility in accordance with the results of Analysis of Environmental Impact (<i>Analisis Mengenai Dampak Lingkungan</i> or “AMDAL”) that have been adjusted to reflect the function of the Protected Forest Area; (c) recommendation letter from the relevant Regent/Mayor and Governor based on technical consideration by the relevant forestry authority; (d) technical consideration from the relevant State Owned Enterprise (<i>Badan Usaha Milik Negara</i> or “BUMN”) if the target Protected Forest Area is located in the work area of a BUMN; (e) Protected Forest Area utilization plan and work plan together with (i) location map, (ii) details of the total area of the target Protected Forest Area and (iii) the newest satellite imaging with minimum resolution of not less than 15 meters; (f) Mining License & Contract; and (g) capability statement, in the form of a notarial deed, re ability to fulfill all obligations and to bear all costs in connection with the Rent Use Permit Application. <p>C. In the event the Rent Use Permit Application is approved, MoFor will, first, issue an Approval in Principal License with a maximum initial validity period of 2 years but extendable, subject to evaluation by MoFor (“Approval in Principal License”).</p> <p>D. The Approval in Principal License will specify a number of obligations that must be fulfilled by the Rent Use Permit applicant in order to obtain the Protected Forest Rent Use Permit (“Approval in Principal License Obligations”), including:</p> <ul style="list-style-type: none"> (a) if the applicant’s Approval in Principal License is subject to the obligation to provide compensation land, because the relevant Protected Forest Area is located in a Province, where the total Forest Area is less than 30% of the total Provincial area including rivers and/or islands, then the applicant must provide and surrender compensation land in the ratio of not less than 1:2; (b) if the applicant’s Approval in Principal License relates to a Protected Forest Area which is located in a Province where the total Forest Area is more than 30% of the total Provincial area including rivers and/or islands, then the applicant must submit a capability statement re payment of Non Tax State Revenue in respect of Forest Area Utilization and carry out reforestation with regard to river area rehabilitation in the ratio of at least 1:1; (c) bear all costs in respect of measurement, mapping, boundary determination, tree inventory and compensation for the Protected Forest Rent Use Permit Area; (d) pay the Forest Resources Royalty (<i>Provisi Sumber Daya Hutan</i> or “PSDH”)

Legal Basis	Remarks
	<p>and Re-forestation Fund Contribution (<i>Dana Reboisasi</i> or “DR”) pursuant to the prevailing laws and regulations;</p> <p>(e) pay compensation for investment expenses of Forest Area management, as a result of Forest Area Utilization, in accordance with the total Protected Forest Rent Use Permit Area and period; and</p> <p>(f) submit a capability statement, in the form of a notarial deed, in respect of the (i) implementation of reclamation and reforestation activities re the utilized Protected Forest Area, (ii) forest protection, (iii) prevention of forest devastation, erosion, landslides and forest fires, (iv) providing access to relevant forestry officials to carry out monitoring and evaluation, (v) bearing cost of compensation land determination and (vi) implementation of compensation land reforestation.</p> <p>E. Once the Approval in Principal License holder fulfills the Approval in Principal License Obligations, MoFor will issue the Protected Forest Rent Use Permit.</p> <p>F. Protected Forest Rent Use Permits will be granted for a maximum period of 20 years in accordance with the feasibility studies but be extendable in accordance with the validity period of the relevant Mining License & Contract and subject to evaluation by the Monitoring and Evaluation Team.</p> <p>G. The Protected Forest Rent Use Permit holder has the right to:</p> <p>(a) occupy and manage, as well as carry out activities related to the Underground Mining activities in, the Protected Forest Area; and</p> <p>(b) utilize the products derived from activities carried out in connection with the Underground Mining activities as well as to build supporting facilities and infrastructure in the Protected Forest Area.</p> <p>H. The Protected Forest Rent Use Permit holder has certain obligations (“Protected Rent Use Permit Obligations”) as follows:</p> <p>(a) implement Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL) management and monitoring;</p> <p>(b) carry out Underground Mining activities in accordance with the plan stated in the feasibility study documents;</p> <p>(c) carry out reclamation and/or reforestation in accordance with prevailing laws and regulations;</p> <p>(d) carry out forest protection in the Protected Forest Rent Use Permit Area;</p> <p>(e) pay Non Tax State Revenue in respect of Forest Area Utilization and carry out cultivation activities in respect of river area rehabilitation, where the Protected Forest Rent Use Permit relates to a Protected Forest Area in a Province where the total Forest Area is more than 30% of the total Provincial area including river areas and/or islands, in accordance with the prevailing laws and regulations;</p>

Legal Basis	Remarks
	<p>(f) bear the cost of land compensation determination and carry out the reforestation of compensation land, where the Protected Forest Rent Use Permit relates to a Protected Forest Area in a Province where the total Forest Area is less than 30% of the total Provincial area, including river areas and/or islands, in accordance with the prevailing regulations; and</p> <p>(g) report periodically the implementation of activities to MoFor, MoEMR and MoE with copies to the relevant Governor and Regent/Mayor.</p> <p>I. Protected Forest Rent Use Permit holders are prohibited from carrying out Underground Mining activities which may cause land surface subsidence or permanent changes in the Protected Forest Area main function and purpose.</p> <p>J. Protected Forest Rent Use Permits are transferable to other parties subject to MoFor's written approval.</p> <p>2. Monitoring and Evaluation: MoFor will form a team to carry out monitoring and evaluation in respect of the Protected Forest Utilization activities.</p>

3. **EXPIRATION OF LICENSES AND THE RELINQUISHMENT OF PROTECTED FOREST AREAS**

Legal Basis	Remarks
Articles 13 - 16	<p>A. A Protected Forest Rent Use Permit shall expire in the following situations:</p> <p>(a) expiration of its validity period;</p> <p>(b) the Protected Forest Rent Use Permit is voluntarily returned, by its holder, to MoFor prior to the expiration date of the same; or</p> <p>(c) revocation of the Protected Forest Rent Use Permit by MoFor.</p> <p>B. The expiration of the Protected Forest Rent Use Permit does not extinguish the obligations of the Protected Forest Rent Use Permit holder to fulfill all of the outstanding Protected Rent Use Permit Obligations.</p> <p>C. A Protected Forest Rent Use Permit may be revoked by MoFor if its holder (i) does not fulfill any of the Protected Rent Use Permit Obligations referred to in Points 2.1 H (a) – (e) above or (ii) violates any of the provisions referred to in Points 2.1 I and J above.</p>

4. **TRANSITIONAL PROVISIONS**

Legal Basis	Remarks
Articles 17	<p>A. Feasibility Studies of Mining License & Contract holders, which have been approved but have not resulted in the issuance of Protected Forest Rent Use Permits prior to the issuance of Presidential Regulation 28/2011, shall remain valid.</p>

Legal Basis	Remarks
	<p data-bbox="435 275 1393 428">B. Mining License & Contract holders, with valid AMDALs, which have not yet obtained Protected Forest Rent Use Permits at the time of the issuance of Presidential Regulation 28/2011, must adjust those parts of their Environmental Management Plans (RKL) and Environmental Monitoring Plans (RPL) which relate to the main function of the Protected Forest Areas.</p> <p data-bbox="435 470 1393 562">C. The AMDAL Regional Appraisal Commission must transfer the Mining License & Contract holders' AMDAL assessment process to the AMDAL Central Appraisal Commission in accordance with the prevailing laws and regulations.</p>