Contract Transparency in Indonesia: Assessment of Benefits, Challenges, Risks, and Opportunities

SUBMITTED BY
Ahmad Alamsyah Saragih, Giri Ahmad Taufik, Mulki Sahder, dan Violla Reininda
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SKK Migas = Satuan Kerja Khusus Minyak dan Gas/ Special Task Force

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Graph I : Information Dispute Mechanism Process

Box

Box I : The Significance of Consequential Harm Test in Disclosing Extractive Contract
This report is an attempt to pursue greater transparency in extractive contract licenses under EITI Requirement 2.4. It requires EITI implementing countries to disclose full text of extractive contracts/licenses as well associated documents. Based on validation result in 2019, Indonesia has made “meaningful progress” in its EITI implementation. Indonesia is making effort to further advance its EITI implementation and requirement 2.4 needs to be taken into account. Therefore, this study is conducted to assess benefits, challenges, risks, and opportunities of disclosing extractive contracts.

This report assesses existing Indonesia’s legal framework on public information transparency that facilitates extractive contract/license disclosure, by focusing on challenges, benefit, risks, and opportunities in pursuing greater disclosure of the contract. This assessment is undertaken by evaluating the 2.4 EITI Requirement 2019 against the existing legal framework and practice related to extractive contract/license disclosure. Furthermore, this report is produced by a consultant team with various backgrounds, namely, Alamsyah Saragih, Giri Ahmad Taufik, Mulki Sahder, and Viola Reinindra. The consultan team has extensive experiences in freedom of information, policy, and law reform issues in Indonesia.

Finally, the team would like to extend our gratitude to Pak Sampe, Pak Agus and Staffs from EITI National Secretariat from Ministry of Energy and Mineral Resources, Emanuel Bria and Gay Ordenes from the EITI International Secretariat. From the Industry we would like to extend our gratitude to Pak Djoko from Indonesia Mining Association, Ary Nugroho from Publish What You Pay and Adri Ibnu from Kaltim Prima Coal. In addition, we also like to thank for all parties, that cannot be mentioned one by one, for their help and assistants in the drafting of this report.

Jakarta, September 2021

The Consultant Team
EXECUTIVE SUMMARY

In 2010, Indonesia declared its commitment to implement a global standard of openness and accountable management of oil, gas, and mineral resource. One of the standards is to disclose any contracts/licenses and related document to the implementation of the contracts/licenses. In 2019, a new set of standards has been adopted, one of the requirements is to disclose all contracts, and licenses and its amendment from 1 January 2021. This includes: (i). the full text of any contract, concession, production-sharing contract, or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil gas and mineral resources; and (ii). The full text of any annex, addendum or rider which establishes details relevant to the exploitation rights described or the execution thereof. Additionally, the requirement also encourages implementing countries to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals as well as any document to the execution of the contracts.

Since its commitment, Indonesia has put considerable policies in promoting and encouraging extractive industries transparency through various program, among others, the one data initiative. This initiative has provided considerable information about extractive industries, especially at aggregate level. Nonetheless, the initiative still needs to be pushed further through disclosure of contract/licenses as required by 2.4 EITI Requirement 2019.

This report highlights several challenges, risks, and opportunities to the disclosure of contract/license. There are two identifiable legal challenges/barriers in disclosing contract/licenses, namely, the insistence of public institution, that consider extractive contracts not as public information required by the law. This position has been taken by MoEMR Consequential Harm Test Document Number 001/2020, and the Supreme Court in Novrizon Burman versus SKK Migas (2021). In 2018, the MoEMR produced a consequential harm test documents that outlined perceived risks in contract disclosure. There are five perceived risks stipulates in the consequential test documents, namely: (i). potential infringement of personal information or proprietary information; (ii). potential cause for competitive harm if a contract be publicly disclosed; (iii). protection of natural resources; (iv). potential litigation on wrongdoing; and (v). jeopardizing contractors mining operations. In 2020, MoEMR has altered the perceived risks in accommodating a new development, where the MoEMR has removed potential infringement of personal information or proprietary information as a perceived risks in contract disclosure.
This report assessment of challenges above: (i). in the context of supreme Court position, the Supreme Court does not provide sufficient reasoning for its position. However, from the Court wording it does not prohibit the disclosure of contract. The court merely stipulates that the Public Institution, i.e., SKK Migas does not have an obligation to disclose the contract. Consequently, this decision cannot be used as justification to deny contract disclosure. (ii). All the perceived risks in the consequential harm test need to be reassess and re-examined by the EITI Multi Stakeholder Working Group (MSG) to ensure the legitimacy, credibility, and validity of the risks. After short simulation on several key points on the perceived risks, this report find it is less likely that all the validity of perceived risks can be substantiated if a thorough and objective consequential harm test is conducted by the MSG.

This report also highlights opportunities in pursuing greater extractive industries transparency, namely: (i). the favorable positions of Information Commission declaring contracts/licenses as public documents; (ii). utilization of mitigating technique for the perceived risks; (iii). the utilization Open Government Indonesia initiative; (iv). optimizing the existence information channel developed by MoEMR, notably, MoDI (Mining), MDR 2.0 (Oil & Gas) and OneMap (GeoPortal); and (v) establish a reward system for compliance. This report suggests optimizing these opportunities in pushing for contract disclosure, which should be reflected in the roadmap to contract disclosure.

This report also highlights some actionable recommendations for the MSG to pursue further contract/licenses disclosure. These actionable recommendations are:

a. To establish a working group, consists of the MSG selected members in collaboration with MoEMR Information and Documentation Officer (PPID/IDO), if possible, to conduct consequential harm tests in conjunction with determining risks mitigation technique for extractive contracts/licenses disclosure.

b. To reevaluate and reassess the Consequential Test Document Number 1/2020, and to determine risks mitigation technique in conjunction with the reevaluation and reassessment of Consequential Test Document Number 001/2020.

c. To establish Information and Documentation Officer (PPID/IDO) in Special Task Force Upstream Oil and Gas/ Satuan Kerja Khusus Minyak dan Gas SKK Migas, as part of steps in conducting consequential harm test in oil and gas sectors. The establishment of PPID in SKK Migas is needed to organize the consequential harm test and determining risks mitigation technique in contract disclosure as well facilitate systematic contracts/licenses disclosure.
d. To push extractive/contract disclosure as part of the National Action Plan for Open government in next 2022 – 2024 national action plan cycle.

e. To enhance MODI, MDR 2.0 and OneMap Data information system in accommodating contract disclosure based on mitigation technique agreed by MSG. Additionally, the existence of this information system canal, can be considered as part of systematic disclosure steps as outlined in the Guidance Note 2.4 Requirements.

f. To develop a roadmap that consists of steps need to be taken to conduct the above suggestions.
CHAPTER I: INTRODUCTION

1. BACKGROUND

Indonesia natural resource has long been a significant part of the Indonesian economy. The extractive industry is the fifth biggest sector contributing to the Indonesian GDP.¹ The two biggest extractive sectors are oil and gas, and coal and metals sectors. In 2019, these two sectors combined contribute roughly around $ 57 Billion, more than 70 % of extractive sectors GDP in Indonesia.² The operation of oil and gas sector involves 175 exploration contracts (K3S Eksplorasi)³ and 82 production contracts (K3S Produksi).⁴ In mining sectors, there are 5,397 mining licenses that consists of 2,559 metals and coal mining licenses, 2,835 non-metals and non-coal mining licenses, and 3 Special Licenses Mining.⁵

The abundant natural resources can provide wealth in improving the livelihoods of people in a country. However, the large amount of rent generated by natural resources revenue also provide incentives for rent seeking activities, corruption, and nepotism in its management. Therefore, a strong, accountable, and transparent natural resource governance is essential to determine whether the natural resource wealth will eventually lead to people prosperity or harm the people welfare.

Realizing the importance of transparency and accountability in the management of natural resource wealth, in 2010 Indonesia committed to a global standard in promoting open and accountable management of natural resources developed by The Extractive Industries Transparency Initiative (EITI). One of the standards is to disclose contracts and licenses that are granted, entered, or amended from 1 January 2021.

For Indonesia, the requirement for contract/licenses disclosure has a strong constitutional basis. There are two constitutional arguments for the contract/license’s disclosure, namely, basis from the existence of Article 33 and Article 28 F of the Constitution.

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² Bank Indonesia (Indonesia Central Bank), https://www.bi.go.id/seki/tabel/TABEL7_1.pdf
³ https://www.skkmigas.go.id/contact/kkks-eksplorasi
⁴ https://www.skkmigas.go.id/contact/kkks-produksi
The Article 33 of the Constitution stipulates that the ownership of natural resources belongs to the people. The Article 33 positions the government as steward of the wealth. The final benefit of the natural resource’s wealth should go to the prosperity of the people. In one of the decisions, the Indonesian Constitutional Court requires, among other, the government -as a steward- to involve the people in managing the natural resources. Furthermore, the Court requires such participation should be done meaningfully. While there is no specific stipulation on contract/license’s disclosure in the decision, it implies that the requirement for meaningful participation should require openness and transparency, including disclosure of contract/licenses.

The Article 28 F stipulates that “every person has the right to communicate and acquire information to develop his/her personal self, and his/her environment ....”. The article has then become a basis for the formulation of Public Information Disclosure Law (PID Law). Article 11 Par.1 (e) of the PID Law specifically mandates the requirements of public institutions to disclose any agreement with third parties.

Apart from the legal arguments, the contracts/licenses disclosure also creates several benefits for the government and extractive contractors in disclosing contracts/licenses. For instance, the IMF explains in its 2007 Guide on Resource Revenue Transparency the obligation to publish contracts should in fact strengthen the hand of the government in negotiations, in a way it will increase public pressure on the government to negotiate a good deal. For the contractors, Oxfam in Contract Disclosure Survey 2018 highlights several benefits among others: (i) to strengthen a company’s social license to operate by dispelling suspicion and fostering trust with communities; and (ii). to increase stability and help protect contractors from the risk of future scandals.

Despite the strong constitutional mandate and benefit to disclose contract/licenses, the government, and contractors alike, are still hesitant to embrace openness and transparency in the industries. This report attempts to examine in detail challenges, risks, and opportunities to further encourage disclosure of contract/licenses in Indonesia extractive industries in Indonesia.

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6 Indonesian Constitutional Court Number: 03/PUU-VIII/2010 on Judicial Review Law Number 27 Year 2007 on Small Islands and Coastal, p.161
7 Indonesia Republic Law Number 14 Year 2008 on Public Information Disclosure
8 In Indonesia legal framework, the contractors that hold licenses/contracts refers as contractor since the concessioners does not own of the resource. The law structures the concessioners merely as a contractor that conduct exploration and production of extractive commodities on behalf of the government in exchange for share of the production/fees.
10 Ibid, p.10
2. OBJECTIVES

The objective of this report is to assess benefits, challenges, risks, and opportunities in disclosing extractive contracts/licenses sectors to implement EITI Requirement 2.4 of the EITI Standard on Contract Disclosure.

3. METHOD

This report applies a qualitative approach in identifying benefits, challenges, risks, and opportunities in disclosing extractive industry contracts/licenses. In this approach, all the data/information collected are clustered, synthesized, and analyzed to identify the benefits, challenges, risks, and opportunities of contracts/licenses disclosure. From the analysis, the report also provides actionable recommendations in pursuing greater contract disclosure in Indonesia extractive industry.

This report utilizes three techniques in collecting information/data: (1) online research in finding relevant regulations, court decisions, and materials regarding contracts/licenses disclosure in the extractive industry; (2) consultation with relevant stakeholders; (3) conducted a limited access audit by observing information provided in relevant stakeholder websites, reports, and other information channels.

CHAPTER II: INDONESIA REGULATORY FRAMEWORK ON PUBLIC INFORMATION TRANSPARENCY, AND CONTRACT/LICENSES DISCLOSURE

1. INDONESIA PUBLIC INFORMATION DISCLOSURE LAW 2008 (PID LAW 2008)

A. GENERAL OVERVIEW

In Indonesia, the right to information is protected under the constitution. Article 28F of the Amended 1945 Constitution stated that every person has the right to communicate and obtain information for the purpose of the development of his/herself and social environment. Everyone also has the right to seek, obtain, possess, store, process, and transmit information through all methods available to them. This constitutional right was further regulated in the PID Law 2008.
The PID Law 2008 requires the adoption of PID by public institution at both the central and local levels of government, as well as any other institution that finance from state budget.\textsuperscript{11} The public institution are required to produce three categories of information.

First, the periodic information consists of information on the operations and performance of the related public agency, data on the financial report, and/or other data regulated by the law.

Secondly, the immediate information, includes information that may endanger people’s lives or disrupt public order.

Lastly, the information that should be always available, includes a number of all public information, decisions and justifications for those decisions, policies, agreements, working plans of an agency, including annual budgets, reports on access to public information services, and so on.

From the three categories of information, it can be seen an agreement made by a public body with a third party is categorized as disclosed information. Nonetheless, the PID Law 2008 authorizes public institution to also declare, based on law, certain information as classified. There are 10 justifications for classified information\textsuperscript{12}, namely: (i). the potential hampering law enforcement process; (ii). protection of intellectual property rights and healthy business competition; (iii). the state defense and security; (iv). revealing Indonesia’s natural wealth; (v). harmful to the national economic security; (vi). jeopardizing diplomatic relations; (vii). The contents of an authentic personal deed and an individual’s last will or testament of an individual; (viii). Personal data; (ix). The memorandum or letters between the public agencies or among the public agencies, except the decision of the Information Committee or the courts; and (x). information that may not be disclosed under the law. From the 10 justifications, mostly the government has used at least 3 justifications to declare extractive contracts/licenses as classified documents, namely: (i). healthy business competition, (ii). revealing the nation natural wealth, and (iii) personal data protection. The elaboration of these three justifications discusses further in the next sections.

\section*{B. CONSEQUENTIAL HARM TEST}

The PID law 2008 declares every public information is open and accessible to the public. To declare for public information as classified, the public institutions must observe a stringent procedure outlined

\textsuperscript{11} Public institution defines as executive, legislative, and judicative and any other institutions that carried out government functions, which the source of the fund come in whole or partially from state budget, central or local state budget, or non-government organization that the budget, in whole or partially, come from state budget, public donation domestic or foreign. Article 1 number 3 PID Law Number 14 of 2008.

\textsuperscript{12} Article 17 of PID Law
in the law. The PID Law 2008 requires a consequential harm test before public institutions declare that specific information/document is classified. There are two threshold questions for the test these are: (i). what harm/risks for public institutions, if a particular information/document is declared as open? the harms/risks should be associated within the parameter of the 10 justifications based on Article 17 of PID Law 2008 as previously discussed above. (ii). whether public interest is greater to the risks/harms.

The process of considering consequential harms/risks and weighing it to the public interest is essential to determine whether extractive contract/licenses can be legitimately disclosed. As previously discussed, there are 3 justifications used by the government to declare extractive contract/licenses as classified documents/information. These are healthy business competition, revealing the nation’s natural wealth, and personal data protection.

The justification for the healthy business competition relates to the implementation of Prohibition of Monopolistic Practices And Unfair Business Competition Law, which states “business actors are prohibited from conspiring with other parties to obtain information on their competitors’ business activities which are classified as company secrets so that may result in unfair business competition.”

To protect this interest, the PID law 2008 requires public bodies to keep information that may threaten it. However, neither the law nor its delegate regulations provide clear parameters for this justification.

The protection of personal data is intended to provide protection for one’s privacy interest from the consequences of losses due to the disclosure of information. There are several clusters of personal data that are protected in the PID law, namely: (i). the history and condition of family members; medical condition of a person (physically and psychologically); (ii). person’s financial condition, assets, income, and bank account; (iii). a test result in relation to a person’s capabilities, intellect, and recommendations; and (iv). personal records related to the activities of formal education and non-formal education. The disclosure of confidential information to protect these interests can be waived, in certain conditions: (i). if regulated by law or in the greater public interest. For example, the Banking Law excludes the bank secrecy principle against law enforcement and taxation purposes; (ii). the person/legal institution provide a written consent to disclose it to the public; and (iii). the person assumes public offices.

15 Ibid
The revealing Indonesia’s natural wealth justification is another common reason to declare extractive licenses/contracts as classified information/documents. During the PID Law 2008 deliberation in the parliament, there is a question from the parliament regarding what is the limitation in the revealing natural resources?\(^{16}\) The parliament argues that with the advancement of technology, satellites are able to photograph the natural wealth that is in the ground up to a certain distance. In response, the government explained that it was related to sovereignty. Sovereignty is meant to protect its citizens, nature, objects in the country, as well as all wealth and assets in that country. If there is information which by its nature must be kept secret, then this has become part of the protection of state sovereignty. Information about natural resources may indeed be disclosed, but the details regarding these natural resources must be protected.

The procedure to conduct consequential harm test is outlined in detail in Government Regulation (GR) 61/2010 and Information Commission Regulation No. 1/2017.\(^{17}\) First, the Information Management and Documentation Officer (PPID), the person in charge of storing, documenting, supplying, and providing information services in a government agency, must undertake a comprehensive and consequential harm test (*uji konsekuensi*). In doing so, PPID coordinates with officials in the working unit who control and manage information to produce written considerations. In the written consideration, PPID must contain information on what information as classified, the reason for declaring it as classified/consequential harm test, the length of time for the classified information.\(^{18}\)

The results of this written consideration are then reported to the head of the public institution for approval. Subsequently, the head of the public institution approved the consequential harm test, by passing a decision that declared certain information as classified. However, it is also important to note that if an information has been categorized as classified, then it does not mean that public bodies can close the entire document and forever. The PID law stipulates that public bodies are obliged to only redact classified information, not the entire document. In addition, there is a retention period of information exclusion for the longest 30 years.

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**C. OBJECTION AND INFORMATION DISPUTE RESOLUTION**

The PID Law regulates four stages of objection or information dispute resolution in Indonesia. The four stages include objection to the PPID supervisor, information disputes at the information commission, appeal to the district court or state administrative court, and cassation to the Supreme Court.

\(^{16}\) Ibid

\(^{17}\) Indonesia Government Regulation Number 61 Year 2010 on the Implementation of the Public Information Disclosure Law.

\(^{18}\) Article 8 par. (1) Commission of Information Regulation Number 1 Year 2017 on Classification of Information
In the first stage, if the applicant experienced a rejection of a request for information on the grounds that the information is classified, the objection can be submitted administratively to the superior of PPID. This mechanism is structured with the assumption that PPID’s superiors have the authority to decide whether an information is classified as exempt or not under the law. The objection can submitted no later than 30 working days after the rejection, and the supervisor in question has to respond the objection in writing for the longest 30 days. This objection stage is a prerequisite before the applicant submits information dispute to the central information commission and the Courts.

In the second stage, if the applicant is not satisfied with the PPID supervisor’s response, they can file information dispute case to the information commission on the national, provincial, and regency/city level. In accordance with the Article 27 of the PID Law, the applicants who are dissatisfied with the decision of the PPID superiors of public bodies at the central level, must be resolved at the Central Information Commission. Meanwhile, if the dissatisfaction occurs because of the decision of the superior of the PPID at the provincial or district/city level, the dispute resolution is submitted to the Provincial or Regency/City Information Commission in the jurisdiction of the province or district/city concerned. In the event that the province or district/city does not yet have an Information Commission, the dispute is resolved at the Central Information Commission. The object of the dispute in this case is the decision of the PPID superior. This request for dispute resolution must be submitted no later than 14 working days after the written response from the PPID supervisor. The dispute resolution process at the Information Commission is limited in time, it must be completed within 100 days at the latest.

In general, the examination process in the information commission adheres the shifting the burden of proof principles, in which the respondent party is given more responsibility to prove their reasons or considerations when they refuse to disclose certain information that is considered classified. In addition, one of the important aspects of the trial at the information commission is the possibility for the information commission to reconsider whether the public agency has carried out a consequence
test and a public interest test properly. In its decision, the information commission will decide whether to grant all, part or reject the request for access to information.

If the applicant does not accept the decision of the information commission, if the disputed information managed by state public agency, then the lawsuit is submitted to the state administrative court. On the other hand, if the source of the dispute information managed by a public agency other than a state public agency, then the lawsuit is filed to the district court. The procedural law for examining lawsuits before the District Administrative Court and the District court is carried out in accordance with the procedure in the respective court. There are two options of decision in this stage, namely the annulment or reinforce the information commission decision.

The final stage of information dispute is an appeal/cassation to the Supreme Court. The applicant has 14 days after the decision of the district court or administrative court to file this case.

D. CASE STUDIES ON CLASSIFIED INFORMATION DISPUTE

The rules and regulations governing information disclosure establish that extractive industry agreements and licenses are included in the disclosure of information. This is in reference to Public Information Disclosure Act article 11 par (1) letter e, which specifies that public agencies must reveal agreement documents to third parties. Similar provisions are also regulated in the National Information Commission Regulation No. 1 Year 2021 on Public Information Service Standard. However, in practice, the disclosure of extractive sector information has not been fully implemented, either by public agencies, or in information disputes that occur. There are three cases that will be described in this section.

First, the information dispute case between the Center for Public Information Development and the Indonesian Ministry of Energy and Mineral Resources (MoEMR). This case concerns a request for information on a list of currently active mining, oil, and gas contracts in Indonesia, as well as a copy of the contract between the Indonesian government and the contractors.

There are three arguments provided by the Ministry of Energy and Mineral Resources in categorizing the requested information as confidential. First, the existence of Article 1338 of the Civil Code which applies stated that contract made by institution bind as a law only for the respective parties, the danger

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19 Supreme Court Decision Number 197/VI/KIP-PS-M-A/2011.
of opening up Indonesia’s natural resources data, and and the possible impact on national economic resilience and foreign relation in disclosing information relating to taxes, duties, charges and donations charged to the company.

In response to the article 1338 of the civil code, the central information commission stated that the respective article regulates the binding status of an agreement for the parties involve, not on the confidentiality of the document or information contained. In addition, the requested contract does not explicitly state the nature of its confidentiality. Meanwhile, on the danger of opening up Indonesia’s natural resources data, the central information commission believes that the contract is not the same and does not contain an exploitation report that specify the natural resource potention. Lastly, on the possible impact on national economic resilience and foreign relation, the commission is of the view that the information in the contract only contains the company’s obligations and does not include the calculation of tax or other financial obligation. Therefore, it is irrelevant that it can harm national economic resilience. In addition, the contracts between the government and extractive industry contractors are the result of ordinary civil negotiations, have nothing to do with diplomatic correspondence that can harm the country’s foreign interests. For these reasons, the commission decided that the requested information is classified as public information. This decision then has permanent legal force since no legal action has been filed 14 days after the decision was made.

The second case, the dispute between a journalist, Noprizon Burman, against SKK Migas over information on the Oil and Gas Production Sharing Contract (PSC) which operating in Riau. In decision number 020/KIP-R/PS-A-M-A/IX/2018, the Information Commission views that the defendant is a public agency and all requested information is part of an open information, therefore SKK Migas has an obligation to provide the information. Against the decision, SKK Migas then filed a lawsuit to the administrative court. One of the main arguments made was that SKK Migas is not a public body as defined by the information disclosure act because it is not an executive, legislative, or judicial body, has no duties or functions related to state administration, and only has the authority to sign production sharing contracts with contractors as a representative of the state. Surprisingly, the administrative court agreed with the arguments and ruled in favor of the plaintiff.

In a subsequent judgement at the cassation level, the Supreme Court nullified both the information commission and the state administrative court’s decisions. The supreme court’s panel of judges tried the case itself and agreed with SKK Migas that they are not public organizations and that the material sought is not categorized as public information. However, the supreme court did not provide any explanations or justifications.
Third, the case of information disputes between the Bumi Foundation (Yayasan Bumi) and the Investment and One Stop Service Office of the East Kalimantan Provincial Government. The applicant in this case filed a request for information related to existing permits in the mining, forestry, plantation, and environmental sectors in the province of East Kalimantan. The Respondent rejected the application on the grounds that it was included in the exempted information because it was classified as unfair business competition and personal secret.

In its decision, the East Kalimantan Information Commission stated that data information related to the name of the permit holder and complete documents of mining, forestry, plantation, environmental permits as long as it does not contain information related to business plans, business practices, business agreements of the licensee are not included in the information that excluded. At the document examination conducted by the commission, the licensing documents applied for did not contain information relating to the business plan, business practices and business agreement of the owner of the permit.

In addition, data information related to business licensing documents related to mining, plantations, forestry, and the environment cannot be categorized as personal confidential assets and can reveal personal assets of individuals or legal institution. The first reason is that a license is not the same as ownership right, so it is not necessarily an asset. Unless data information related to permits in the dispute information contains data information related to bank accounts of contractors/legal institution, individual bank accounts in legal institution or financial transactions of legal institution and individuals, it may be excluded from the access of the applicant. However, in a document examination conducted by the commission at the Respondent’s office, the information contained in the said information was not found so that the reason for the exclusion of information in this case by the Respondent should not be accepted. If there is data information related to bank accounts of contractors/legal institution, individual bank accounts in legal institution or financial transactions of legal institution and individuals, the respondent can obscure/blacken the information content of the said data, but that does not mean excluding all data information from the applicant’s access.

The court quoted previous decisions issued by the Supreme Court, and the Information Commission20, that the environmental impact analysis document (AMDAL) along with the map information contained in the AMDAL document and the environmental management effort-environmental monitoring effort (UKL-UPL) document and documents for mining business permits and the like along with mining

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reclamation plans issued by local governments, both provincial, district and city, are public information that is open and must be provided by public agencies to be fully accessible to the public.

In its decision, the commission ordered the Respondent to provide information requested by the applicant, except information related to business plans, business practices, business agreements of license holders and bank accounts of contractors/legal institution, individual bank accounts, or financial transaction. The classified information can be obscured or blackened in the document without eliminating the access rights of the information requester to all data information documents. This decision was later upheld by the state administrative court in decision number 14/G/KI/2018/PTUN.SMD.

2. REGULATORY FRAMEWORK ON EXTRACTIVE INDUSTRY

Article 33 of the 1945 Constitution further delegates specific regulations on licenses and management of extractive industry into several legislations, namely: (i). Oil and Gas Law 2001\textsuperscript{21}; and (ii). Mineral and Coal Law 2009.\textsuperscript{22} Additionally, the Job Creation Law also regulates several aspects of Minerba Law 2009. Furthermore, both laws are further regulated in various government regulations as well as ministerial regulations.

The basis of extractive industry policy in Indonesia is stipulated under Article 33 Ayat (2), (3), and (4) of the 1945 Constitution. Explicitly, the articles stipulate:

(2) Production sectors important for the state and vital for the livelihood of the people at large shall be controlled by the state.

(3) The land and waters and the natural wealth contained in it shall be controlled by the State and utilized for the optimal welfare of the people.

(4) The national economy shall be conducted by virtue of economic democracy under the principles of togetherness, efficiency with justice, sustainability, environment insight, autonomy, as well as by safeguarding the balance of progress and national economic unity.

Several precedents from the Constitutional Court have interpreted the aspect of state control over natural resources contained in Article 33 of the 1945 Constitution. Referring to the Constitutional Court’s decision on judicial review on Oil and Natural Gas Law (Decision Number 002/PUU-I/2003),\textsuperscript{21} Law Number 22 of 2001 on Oil and Gas\textsuperscript{22} Law Number 4 of 2009 on Coals and Minerals as revised by Law Number 3 Year 2020.
Forestry Law (Decision Number 003/PUU-III/2005), Water Resources Law (Decision Number 058-059-060-063/PUU-II/2004 and Number 008/PUU-III/2005), Electricity Law (Decision Number 001-021-022/PUU-I/2003), the Constitutional Court at first breaks down the production sectors that must be controlled by the State, which are:23

a. sectors that are important for the State and vital for livelihood of the people.

b. sectors that are important for the State even though not dominating livelihood for the people; and

c. sectors that are not vital for the State, but important for the livelihood of the people.

The phrase “controlled by the State”, according to the Constitutional Court, must be interpreted including the meaning of State’s control in an extensive meaning, which derived and originated from the conception of the sovereignty of Indonesia people towards all the wealth’s sources of “the land, waters, and natural wealth contained in it”. This also includes public ownership by people’s collectivity on the mentioned wealth resources. The concept of “controlled by the State” cannot be reduced solely as the ownership in private law framework.

Therefore, as constructed by the 1945 Constitution, people collectively mandate the State to apply policies (beleid), conduct caretaking (bestuursdaad), regulation (regelendaad), management (beheersdaad), and supervisory (toezichthoudensdaad) for the purpose of the greatest prosperity of the people. In the caretaking function (berstuursdaad), the government conducts the authority to issue and revoke the permission facility (vergunning), license (licentie), and concession (consessie). The function of State’s regulation (regelendaad) is conducted by the authority of legislation by DPR and the government and government regulation. The function of State’s management (beheersdaad) is conducted by shareholding mechanism and/or direct involvement in managing State Owned Enterprises (SOE) or State-Owned Legal Entity (BHMN) as institutional instruments through the State, c.q. government, utilize their control over these resources to be used for the greatest prosperity of the people. The function of State’s supervision (toezichthoudensdaad) is conducted by the State, c.q.

23 The Committee of Finance and Economics under Investigating Agency for Preparatory Efforts for Indonesian Independence (BPUPKI) who was led by Mohammad Hatta formulated the definition of State’s control, which are: (a) the government must be the supervisor and the regulator guided by people’s safety; (b) as big the company, as many people rely on here for their lives because the government’s participation should be as much; (c) the land ... shall be under State’s control; and (d) large mining contractors run as State enterprises. Vide, Mohammad Hatta, Penjabaran Pasal 33 Undang-Undang Dasar 1945, Jakarta: Mutiara, 1977, hlm. 28.
government, in order to scrutinize and control the implementation of State’s control over the aforementioned natural wealth fully conducted for the greatest prosperity of the people.

A. OIL AND GAS SECTOR

In the oil and gas sector, the business activities consist of upstream business activities and downstream business activities. Upstream business activity includes exploration and exploitation activities, while downstream business activity includes processing, transporting, storage, and trading. Both are carried out under different types of permits. For this research, the report only discusses aspects of upstream oil and gas legal framework. The report discusses the upstream oil and gas legal framework in three sub sections: general overview of the law, the institutional framework, and the oil and gas contract.

General Overview: Oil and Gas Upstream Sector Regulatory Framework

The upstream oil and gas sector regulatory framework is governed by Law Number 22 Year 2001 on Oil and Gas (Oil and Gas Law 2001). The upstream sector is regulated in Chapter IV, article 11–22. The Chapter IV of the Oil and Gas Law 2001 stipulates general arrangement between government and oil and gas contractors. Additionally, the law also governs fiscal terms in chapter IV.

The law makes a general proclamation that the ownership of the resource, i.e., oil and gas is belonged to the people through the state. Thus, the right to mine (kuasa pertambangan) is embedded in government as a representative of the state. In exercising the right to mine, the government established an Independent Regulatory Body. Before 2012, the implementing agency was known as the Implementing Agency for Upstream Oil and Gas Business Activities (BP Migas). However, after the Constitutional Court’s Decision Number 36/PUU-X/2012 it reformed to the Special Task Force for Upstream Oil and Gas Business Activities SKK Migas. After the stipulation of Law Number 11 of 2020, the existence of Implementing Agency is eradicated to accommodate the Constitutional Court’s decision.

The government via Ministry of Energy and Mineral Resource awards oil and gas contractors to conduct oil and gas exploration and exploitation (production) of the resources. These oil and gas contractors could take legal form as: state/local government owned enterprises, cooperative, and private limited contractors. Additionally, the Oil and Gas Law 2001 also authorizes the government to award a foreign

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26 Article 40 number 1 Law Number 11 of 2020.
entity, in the form of permanent establishment, to carry out the exploration and exploitation of the resources.\textsuperscript{27}

The appointment of the busines entity is governed by a contract call Cooperation Contract/Kontrak Kerjasama (CC/KKS). The CC/KKS is an administrative contract in which the government through BP Migas control exploration and exploitation activities of the busines entity appointed to conduct the exploration and exploitation. The CC/KKS shall at least contains the following term and conditions: (1) ownership of natural resources remains in the hands of the government until the point of delivery; (2) operation management control rests with the implementing agency; and (3) the capital and risks are entirely borne by the business entity or permanent establishment.\textsuperscript{28}

The Oil and Gas Law 2001 obliges the awarded oil and gas contractors to pay: (i) tax; and (ii) non-tax revenue.\textsuperscript{29} Furthermore, the law outline types of tax obligation for the contractors, namely, a general tax (revenue tax, General Service Tax/Value Added Taxes), import tariffs & fees, and local government taxes and levies.\textsuperscript{30} The non-tax revenue consists of: (i). government takes/share per contract; (ii). Exploration and Exploitation levies, and bonuses.\textsuperscript{31}

The upstream oil and gas regulatory framework are also regulated in various delegated regulations. These general delegated regulations are:

b. General, governance, and institutional regulations
   - Government Regulation Number 35 of 2004 on Oil and Gas Upstream Activities and its subsequent amendment.
   - President Regulation Number 95 of 2012 on Transferring the Task and Function of BP Migas.
   - President Regulation Number 9 of 2013 on Oil and Gas Upstream Management Activities.
   - Ministry of Energy and Mineral Resources Regulation Number 35 of 2008 on The Management of Preparation and Award of Oil and Gas Work Areas.
   - Ministry of Energy and Mineral Resources Regulation Number 27 of 2006 on Management of Data That Acquire from General, Exploration and Exploitation Survey of Oil and Gas.
   - Ministry of Energy and Mineral Resources Regulation Number 37 of 2016 on 10 % of Participating Interest for Local Government.

\textsuperscript{27} Article 9 Law Number 22 of 2001.
\textsuperscript{28} Article 6 Paragraph (2) Law Number 22 of 2001.
\textsuperscript{29} Article 31 Paragraph (1) Law Number 22 of 2001.
\textsuperscript{30} Article 31 Paragraph (2) Law Number 22 of 2001.
\textsuperscript{31} Article 31 Paragraph (3) Law Number 22 of 2001.

c. Fiscal related regulations

- Government Regulation Number 79 of 2010 on Cost Recovery and Tax Income Tax Treatment in Oil and Gas Upstream Sector.
- Ministry of Finance Number 76/PMK.03/2013 on Management of Land and Building Tax in Oil and Gas Upstream Mining Sectors and its subsequent amendment.
- Ministry of Finance Number 119/PMK.02/2019 on Reimbursement of VAT, and Sales Tax on Luxurious Goods.

The Oil and Gas Institutional Framework

There are four government agencies that responsible for the regulation, supervision, and management of oil natural gas sector, which are Directorate General of Oil and Natural Gas (Ditjen Migas KESDM), the Special Task Force for Upstream Oil and Gas Business Activities (SKK Migas), and Aceh Oil and Gas Management Agency (BPMA).32

The Oil and Gas Directorate Ministry of Energy and Mineral Resources (MoEMR).

Ditjen Migas MoMR is a directorate under the Ministry of Energy and Mineral Natural Resources (MoEMR). This Directorate is responsible for the entire activities in oil and gas sectors. This Directorate’s duty is to formulate and implement policies and technical standardization in the oil and gas sector. In carrying out the duties, this agency carries out the following functions:

(i) Policy formulation in the oil and gas sector;

(ii) Manage and grant work area process;

(iii) Implementation of policies in the oil and gas sector;

(iv) Formulation of norms, standards, procedures, and criteria in the field of oil and gas;

(v) Providing technical guidance and evaluation in the field of oil and gas;

(vi) Implementation of the administration of the Directorate General of Oil and Gas.

SKK Migas/BPMA

SKK Migas is the implementing agency that focuses on supervising upstream oil and gas activities and managing oil and gas contractors on behalf of the government through cooperation contracts. This institution was established based on Presidential Regulation Number 9 of 2013 on the Management of Upstream Oil and Gas Business Activities, as last amended by Presidential Regulation Number 36 of 2018. The stipulation of Law Number 11 of 2020 firmly eliminates the existence of the prior Implementing Agency (BP Migas) to accommodate the Constitutional Court Decision Number 36/PUU-X/2012.

The main function of SKK Migas is to manage and implement exploration and exploitation of oil and gas activities conducted by oil contractors. In carry out this task, SKK Migas has several functions as follows:

- To advise to Ministry of Energy and Mineral Resources on the policy in preparing and processing of work area award process and KKS.
- To sign the KKS, as government representation.
- To evaluate and prepare plan of development for the first time in a work area to Ministry of Energy and Mineral Resources to be approved.
- To approve subsequent plan of development.
- To approve work and budget plan.
- To monitor and report to the Ministry of Energy and Mineral Resources on the implementation of KKS.
- To appoint the sale of government’s share of oil and gas that could provide the greatest benefit to the state.

The BPMA is an institution that manage and implement KKS in Aceh Province. The establishment of BPMA is part of Aceh special autonomy region that differs from the rest of Indonesia provinces. The BPMA is established under Government Regulation Number 23 Year 2015 on Joint Management of Oil and Gas Natural Resources in Aceh. The main task and function of BPMA is similar to SKK Migas. The difference between SKK Migas and BPMA lies on its organizational structure, unlike SKK Migas that only responsible and report to MoEMR, the BPMA is responsible and report both to MoEMR and Governor of Aceh Province.
<table>
<thead>
<tr>
<th>Aspect</th>
<th>Ministry of Energy and Mineral Resources c.q. Directorate of General Oil and Gas</th>
<th>SKK Migas</th>
<th>BPMA</th>
</tr>
</thead>
</table>
| Functions/Tasks | - Policy formulation in the oil and gas sector.  
- Manage and grant work area process.  
- Implementation of policies in the oil and gas sector.  
- Formulation of norms, standards, procedures, and criteria in the field of oil and gas.  
- Providing technical guidance and evaluation in the field of oil and gas.  
- Implementation of the administration of the Directorate General of Oil and Gas. | - To advise to Ministry of Energy and Mineral Resources on the policy in preparing and processing of work area award process and KKS.  
- To sign the KKS, as government representation.  
- To evaluate and prepare plan of development for the first time in a work area to Ministry of Energy and Mineral Resources to be approved.  
- To approve subsequent plan of development.  
- To approve work and budget plan.  
- To monitor and report to the Ministry of Energy and Mineral Resources on the implementation of KKS.  
- To appoint the sale of government’s share of oil and gas that could provide the greatest benefit to the state. | Similar to SKK Migas; but this is only for Aceh Province. With additional provision apart from consulting the MoEMR, BPMA also needs to consult with the Governor Aceh. |
| Custodian of Oil and Gas Contract | Yes | Yes | Yes, only for Aceh Province |
The Oil and Gas Contracts (KKS/Cooperation Contract)

The Oil and Gas Law 2001 defines KKS as production sharing contracts or any other cooperation contracts in exploration and exploitation activities that whichever give more benefit for the state and results are used for the greatest possible prosperity of the people.\(^{33}\) Furthermore, the law stipulates the minimum provision of the Contract, namely:

a. State revenue;  
b. Work area and its return;  
c. Obligation to disburse funds;  
d. Transfer of ownership of production results over Oil and Gas;  
e. the term and conditions of the contract extension;  
f. dispute resolution;  
g. obligation to supply Crude Oil and/or Natural Gas for domestic needs;  
h. expiration of the contract;  
i. post-mining operations obligations;  
j. occupational Health and Safety;  
k. management of the environment;  
l. transfer of rights and obligations;  
m. required reporting;  
n. field development plan;  
o. prioritizing the use of domestic goods and services;  
p. development of the surrounding community and guarantee the rights of indigenous peoples.  
q. prioritizing the use of Indonesian workers.

There are two types of active KKS in Indonesia based on the fiscal arrangements, the Cost Recovery PSC and the Gross Split PSC. The Cost Recovery PSC allows for contractors to claim cost recovery after the production phase, whereas the Gross Split PSC does not allow company to claim cost recovery in exchange for a greater split in result of oil and gas production for the contractors.\(^{34}\) Currently, the Conventional PSC split between government and contractors is determined in the KKS. The general norm for PSC conventional for oil split is 85 % and 15 % for the government and contractors respectively, whereas for the natural gas is 70 % and 30 % for government and contractors respectively.

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\(^{33}\) Article 1 Number 19 Law Number 22 of 2001.  
\(^{34}\) Ministry of Energy and Mineral Resources Number 08 of 2017 on Gross Split Production Sharing as last amended by Ministry of Energy and Mineral Resources Number 12 Year 2020.
respectively. The PSC Gross Split stipulates different arrangement, in which the government take a
less split in than contractors. The base split for oil is 57 % and 43 % for the government and contractors
respectively, whereas for the natural gas is 52 % and 48 % for government and contractors
respectively. The split can be adjusted using sliding scale principles that are determined by variables
and progressive components. The variables factors are, among others, the status of work area,
location, and reservoir depth. The progressive factors are oil price and cumulative production of the
resources.35

Apart from fiscal terms, the active KKS can also be categorized into two classifications based on the
characteristic of the resources, namely, the conventional KKS and unconventional KKS. The
Conventional is KKS is situated in conventional earth crust, with high permeability. The non-
conventional KKS is located in much deeper earth crust reservoir with low permeability, such as, shale
oil, shale gas, tight sand gas, coal methane gas, and Methane-hydrate that requires fracturing.36
Subsequently, the difference reflect on the term of splits between government and contractors,
relinquishment obligation, much more flexible PoD Requirement, various fiscal incentives, and much
longer concession duration.37

The KKS details provisions consists of 18 sections and 4 exhibits as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Scope and Definitions</td>
<td>general terms/recitals of the agreements of and technical definitions contain in the contract.</td>
</tr>
</tbody>
</table>

35 Article 6 – Article 10 of The MoEMR Regulation 08 of 2017.
36 Article 1 number 1 Ministry of Energy and Mineral Resources Number 05 of 2017 Offering Mechanism of Non-Conventional Oil and Gas Offering.
<p>| II | Term | Duration of the contract (as per law is 30 years), term of extension request, relinquishment of noncommercial well, and term of commercial production. |
| III | Exclusion of Area | Obligation to relinquish some areas in the first ten years of effective date. |
| IV | Work Program and Expenditure | The obligation to develop work program within six years of contract along with expenditure obligation within these years. |
| V | Rights and Obligation of the Parties | Outlines the rights and obligation of the parties in implementing contracts. For contractors, among others, to conduct Environmental Impact Assessments, technical aid, provide funds, transfer of interest, domestic procurement obligation, payment of taxes and dues, domestic market obligation, and data confidentiality result from petroleum exploration, i.e., geology, geophysical, well logs without any consent from SKK Migas. For government, c.q., SKK Migas, among others, to provide facilities, goods and personnel, foreign worker visas, necessary licenses, transportation, security protection, right of way for pipes, |
| VI | Recovery of Operating Costs and Handling of Production | Rights for contractor to reimburse operation costs, import, sale, on the production of oil and gas, percentage of split from production after deduction from recovery costs, Enhanced Oil Recovery arrangement, and First Tranche Petroleum arrangement. |
| VII | Valuation of Crude Oil | Terms of crude oil on sales of the production, the use of net realized price free on board, prohibition of conflict of interest between contractor and buyer’s clause, commission on brokerages. |
| VIII | Valuation of Natural Gas | General terms of natural gas valuation, calculation of natural gas price based on average per unit price, prohibition conflict of interest between contractor and buyer’s clause, and brokerage commission. |</p>
<table>
<thead>
<tr>
<th>IX</th>
<th>Compensation, assistant, and production bonus</th>
<th>Term of signature bonus to the government of Indonesia, contribution to government of Indonesia on equipment or services, other payments to government of Indonesia based on cumulative production, exclusion all the payment from operating costs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Payment</td>
<td>Method of payment, and the use of USD as currency or any other currency based on SKK Migas preference.</td>
</tr>
<tr>
<td>XI</td>
<td>Title to Equipment</td>
<td>Defines the status of ownership of equipment purchased under work program. The equipment purchased belong to the government, except for the lease equipment.</td>
</tr>
<tr>
<td>X</td>
<td>Consultation and Arbitration</td>
<td>Define dispute settlement, if any, deputes arising between the SKK Migas and Contractors relating to contract interpretation and performance. Prior to adjudication process, consultation process is needed to find amicable solution. Subsequently, if no amicable agreement reaches, the dispute will be referred to agree conciliation and arbitration of International Chamber of Commerce.</td>
</tr>
<tr>
<td>XI</td>
<td>Employment and training of Indonesian personnel</td>
<td>Define obligation to employ Indonesian, and further development of skills and training after production stage commences.</td>
</tr>
<tr>
<td>XII</td>
<td>Termination</td>
<td>Define conditions of termination of the contract, notably, termination based on non-viability of the operation according to Contractors opinion within 3 years, non-performance of agreed work and program, within 6 years of contractors non-performance unless it can demonstrate a reasonable and prudent operator, based on arbitration decision.</td>
</tr>
<tr>
<td>XIII</td>
<td>Books and Accounts</td>
<td>Defines SKK Migas responsibility for accounting and bookkeeping of all operating costs with the help of contractor, the right of contractors to audit SKK Migas books and accounts under the contract, SKK Migas and Indonesian government rights to audit company accounts.</td>
</tr>
<tr>
<td>XIII</td>
<td>Other provisions</td>
<td>Notice procedure, Indonesian law and regulation applicability, suspension of obligation under force majeure, avoidance of double taxation clauses</td>
</tr>
<tr>
<td>XVII</td>
<td>Participation</td>
<td>10 % participation interest for Indonesian national company along with procedure stipulation.</td>
</tr>
</tbody>
</table>
**Contract Implementation and Operation Documents: Oil and Gas Upstream Sector**

Apart from the contract, there are several documents required in the implementation of the contracts and the operation of the contract. As discussed in Section B, many of the information requested by the public contain in these documents. These documents are as follows:

<table>
<thead>
<tr>
<th>Documents</th>
<th>Description</th>
<th>Custodian of the Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan of Development (PoD)</td>
<td>As part of document to implement the KKS in developing work areas</td>
<td>MoMMR, SKK Migas/BPMA</td>
</tr>
<tr>
<td>Work Program &amp; Budget (WP&amp;B)</td>
<td>Annual work program and budget to implement the POD</td>
<td>SKK Migas/BPMA</td>
</tr>
<tr>
<td>Authorization for Expenditure (AFE)</td>
<td>Authorization for approved projects based on Work Program &amp; Budget</td>
<td>SKK Migas/BPMA</td>
</tr>
<tr>
<td>Izin Usaha Pinjam Pakai Hutan (IUPPKH)/Operation</td>
<td>Special licenses for utilization of forest areas, where mining activities</td>
<td>Ministry of Environment and Forestry</td>
</tr>
<tr>
<td>Licenses for Forest Use.</td>
<td>occurred within designated forest area</td>
<td></td>
</tr>
</tbody>
</table>

Table III: Contract/Licenses Implementation Documents
Environmental Impact Assessment (EIA) | To evaluate the environmental (nature and social) impact and its mitigation | Ministry of Environment and Forestry

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**B. MINERAL AND COAL MINING SECTOR**

Mineral and coal mining activities define as a series of activities to study, manage, and commercially produce mineral or coal that involve several activities, such as, general survey, exploration, feasibility study, construction, mining, refining/processing of mining materials, transportation, sales, and site abonnement and site restoration.\(^{38}\) The definition define the scope of legal framework that defines the obligation of mining contractors in regard doing business activities in Indonesia. This broad definition, notably on processing and purification of the resources mined, of mining activities is drove by government policy to process all the mineral resource produced domestically. This notably on the obligation for mining concessionaire to build smelter to process and enhance the mineral mined in Indonesia.\(^{39}\)

*General Overview of Mineral and Coal Mining Regulatory Framework*

The Mineral and Coal Mining sector is governed by Law Number 4 Year 2009 on Mineral and Coal Mining as amended by Law Number 3 Year 2020. Previously, the mineral and coal mining sectors were governed by Law Number 11 Year 1967 on Principles of Mining Regulations. The basic difference between the Mining Law 1967 and Mining Law 2009 situates in how each of the laws define government and mining company legal relationship. The Mining Law 1967 structures the legal relationship in a contractual relationship that falls under private law regime. Conversely, the current Mining Law 2009 structures the legal relationship in licenses regime that falls under administrative law regime. Much of the long-term mining contracts, notably big mining contract, that exists prior the enactment of 2009 is still structured as contractual relationship.

Apart from the two laws above, there are delegated regulations that governs the mining activities in Indonesia. These regulations are:

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\(^{38}\) Article 1 number 1 Law Number 4 of 2009
\(^{39}\) Article 102 and 103 Law Number 4 of 2009; and Ministry of Energy and Mineral Resources Regulation Number 07 Year 2012 on Value Added Through Processing and Refining of Mineral
1. Government Regulation Number 23 Year 2010 on Minerals and Coals Mining Enterprise Activities
3. Government Regulation Number 22 Year 2010 on Mining Area Determination.
7. Directorate General of Mineral and Coal Regulation Number 376 of 2020 on Affiliated Mining Services Provider.

Institutional Framework of Mineral and Coal Mining

The Amendment of Mining Law 2009 (Law Number 3 of 2020) has centralized the administration of mining and coal into the central government. This institutional arrangement differs from previous arrangement. Previously, the Mining Law 2009, before the amendment, authorizes local government at provincial level to manage, supervise, and grant licenses/permit for certain mineral and coal to contractors. In the amendment of Mining Law 2009 such authority has been abolished. Currently, the central government has all the authority over aspect of mining, these authorities among others: (i) to determine mining areas after stipulated by the provincial government and consulted with DPR; (ii) to determine Mining Business License Area (WIUP) metal minerals and WIUP coal; (iii) to determine WIUP non-metal minerals and WIUP rocks; (vi) to determine Special Mining Business License Area (WIUPK); (v) to conduct WIUPK offer with priority; (vi). to issue business license. In awarding license, the MoEMR could delegate its authority to local governments. Consequently, all information regarding to mining activities, notably, licenses/permit information are under the supervision of MoEMR, c.q., Directorate of Mining and Coal.

Izin Usaha Pertambangan (IUP)/Mining Business Licenses/Contracts

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40 Article 6 Paragraph (1) Letter f, g, h, i, j, k Law Number 3 of 2020.
41 Amendment Number 26 Article 35 par (4) Law Number 3 of 2020.
The Mining Law 2009 categorizes the mining resources into two categories: (i) mineral mining; and (ii) coal mining. Furthermore the law classified the mineral mining into four classifications, namely: (i). radioactive mineral; (ii). metal mineral; (iii). nonmetal minerals; and (iv). rocks/stones.

Generally, there are only two types of licenses stipulated in Mining Law 2009. These are: the mining licenses, and Special Mining Licenses (IUPK). The mining licenses is further breakdown into several licenses. These types of licenses are: General Mining Licenses (Izin Usaha Pertambangan), Smallholder Business Mining Licenses (Izin Pertambangan Rakyat (IPR)), and Rocks Mining Licenses (Surat Izin Pertambangan Batuan (SIPB)). The mining licenses (Izin Usaha Pertambangan Khusus (IUPK)) is further divided into two sub-types the IUPK and IUPK continuation of Contract of Work (IUPK OP). This type of licenses are continuation of Contract/Agreemen of Work (IUPK OP). This type of contract is based on previous Mining Law 1967. This type of contract is still structured as private contractual relationship, whereas the first the other types of licenses are structured as administrative action.

The Mining Licenses (IUP/IPR/SIPB)

Generally, there is no distinction among the IUP, IPR, SIPB in term of contract structure. The difference among the mining licenses situates in mechanism and procedure to apply for license, size of the area, and type of resources.

There are two types of mining licenses based on the activities stage. First, the exploration mining licenses. This exploration mining licenses includes, among others, general investigation, exploration, and feasibility study activities. Secondly, production mining licenses. This mining licenses for production includes among other construction, Mining, Processing and/or Purification or Development and/or Utilization activities, as well as Transportation and Sales. The mining licenses holder is allowed to conduct partial or the entire business activities. In addition to this, the new law obliges mining licenses holder in production operation to conduct further exploration every year and provide budgeting for mineral and coal conservation.

42 Article 34 par (1) Law Number 4 of 2009.
43 Article 34 par (2) Law Number 4 of 2009.
44 Article 35
46 Article 36 Paragraph (1) Law Number 3 of 2020.
46 Article 36 Paragraph (2) Law Number 3 of 2020.
47 Article 36A Law Number 3 of 2020.
The mining licenses is granted for business entity, cooperative, or private company. The substance of IUP at least contain these materials:

a. company profile;

b. location and area;

c. type of commodity being cultivated;

d. the obligation to place a guarantee for the seriousness of Exploration;

e. working capital;

f. the validity period of the IUP;

g. the rights and obligations of the IUP holder;

h. IUP extension;

i. obligation to settle land rights;

j. obligation to pay state revenue and regional income, including the obligation to pay fixed fees and production fees;

k. the obligation to carry out Reclamation and Post-mining;

l. obligation to prepare environmental documents; and

m. the obligation to carry out the development and empowerment of the community around the WIUP.

The government ensures that mining licenses holders who has completed exploration activities are guaranteed to be able to undertake Production Operation activities as a continuation of their mining business activities. The requirements that must be fulfilled are administrative, technical, environmental, and financial requirements. Subsequently, the government will issue a new license for production phase, i.e., the IUP Production.

The Amendment Mining Law 2009 outlines the length for IUP Exploration, as follows: (i) 8 years for metal mineral, (ii). 3 years for non-metal mineral, (iii). 7 years for a specific non-metal mineral, (iv). 3 years for rocks mining, and (v). 7 years for coal mining. The law determines IUP for production concession duration are: (i). for metal mineral is maximum 20 years and can be extended for 10 years for two consecutive extensions. (ii). for nonmetal mineral is maximum 10 years and can be extended for 5 years for two consecutive extensions. (iii). for a specific nonmetal mineral is maximum 20 years and can be extended for 10 years for two consecutive extensions. (iv). for rocks mining is maximum 5

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48 Article 38 Law Number 3 of 2020.
49 Article 29 Law Number 3 of 2020.
50 Amendment Number 38 Article 46 Paragraph (1) Law Number 3 of 2020.
51 Amendment Number 38 Article 46 Paragraph (2) Law Number 3 of 2020.
52 Amendment Number 33 Article 42 Law Number 3 of 2020.
years and can be extended for 5 years for two consecutive extensions. (v) for coal mining is maximum 20 years and can be extended for 10 years for two consecutive extensions. The extension after the first maximum duration can only be given, after all necessary requirements are met according to the law.

The maximum area granted for IUP is ranging from 500 to 100,000 hectares, which depends on the resources mined. For instance, the smallest concession area is for rock mining that is 500 hectares, whereas the biggest area is coal up to 50,000 hectares.

53 Amendment Number 39 Article 47 Law Number 3 of 2020.
54 Ibid
55 Article 50 – 63 Law Number 4 of 2009.
### Table IV:
Information on Concessionary Areas Sizes for Each Mining Resources.

<table>
<thead>
<tr>
<th>No.</th>
<th>License</th>
<th>Validity Period (years)</th>
<th>License Extension Period</th>
<th>Maximum Area (Hectare)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>IUP for Metal Minerals Exploration</td>
<td>8</td>
<td>1 year per extension</td>
<td>100.000</td>
</tr>
<tr>
<td>2.</td>
<td>IUP for Non-Metal Minerals Exploration</td>
<td>3</td>
<td>-</td>
<td>25.000</td>
</tr>
<tr>
<td>3.</td>
<td>IUP for Certain Types of Non-Metal Minerals Exploration</td>
<td>7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>4.</td>
<td>IUP for Rocks Exploration</td>
<td>3</td>
<td>-</td>
<td>5.000</td>
</tr>
<tr>
<td>5.</td>
<td>IUP for Coal Exploration</td>
<td>7</td>
<td>1 year per extension</td>
<td>50.000</td>
</tr>
<tr>
<td>6.</td>
<td>IUP for Metal Minerals Operation Production</td>
<td>20</td>
<td>Extendable twice, up to 10 years period per extension</td>
<td>25.000</td>
</tr>
<tr>
<td>7.</td>
<td>IUP for Non-Metal Minerals Operation Production</td>
<td>10</td>
<td>Extendable twice, 5 years per extension</td>
<td>5.000</td>
</tr>
<tr>
<td>8.</td>
<td>IUP for Certain Types of Non-Metal Minerals Operation Production</td>
<td>20</td>
<td>Extendable twice, 10 years per extension</td>
<td>-</td>
</tr>
<tr>
<td>9.</td>
<td>IUP for Rocks Operation Production</td>
<td>5</td>
<td>Extendable twice, 5 years per extension</td>
<td>1.000</td>
</tr>
<tr>
<td>10.</td>
<td>IUP for Coal Operation Production</td>
<td>20</td>
<td>Extendable twice, 10 years per extension</td>
<td>15.000</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
<td>Duration</td>
<td>Extension Details</td>
<td>Fee</td>
</tr>
<tr>
<td>-----</td>
<td>------------------------------------------------------------------------------</td>
<td>----------</td>
<td>----------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>11.</td>
<td>IUPK for Metal integrated with processing and refining facilities Operation</td>
<td>30</td>
<td>Guaranteed 10 years per extension</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Production</td>
<td></td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>12.</td>
<td>IUPK for Coal integrated with development and utilization activities Operation</td>
<td>30</td>
<td>Guaranteed 10 years per extension</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Production</td>
<td></td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>13.</td>
<td>IPR for the local residents</td>
<td>10</td>
<td>Extendable twice, 5 years per extension</td>
<td>5</td>
</tr>
<tr>
<td>14.</td>
<td>IPR for cooperative</td>
<td>10</td>
<td>Extendable twice, 5 years per extension</td>
<td>10</td>
</tr>
<tr>
<td>15.</td>
<td>IUPK for Metal Mineral Mining Exploration</td>
<td>8</td>
<td>Extendable once for 1 year per extension</td>
<td>100.000</td>
</tr>
<tr>
<td>16.</td>
<td>IUPK for Coal Mineral Mining Exploration</td>
<td>7</td>
<td>Extendable once for 1 year per extension</td>
<td>50.000</td>
</tr>
<tr>
<td>17.</td>
<td>IUPK for Metal Mineral Mining Operation Production</td>
<td>20</td>
<td>Guaranteed extendable twice, 10 years per extension</td>
<td>-</td>
</tr>
<tr>
<td>18.</td>
<td>IUPK for Coal Mining Operation Production</td>
<td>20</td>
<td>Guaranteed extendable twice, 10 years per extension</td>
<td>-</td>
</tr>
<tr>
<td>19.</td>
<td>SIPB</td>
<td>-</td>
<td>-</td>
<td>50</td>
</tr>
</tbody>
</table>

(Source: Law Number 4 of 2009 on Mineral and Coal Mining as amended by Law Number 3 Year 2020)
The mining licenses document is structured into several sections, namely, (i) the promulgation certificate, and attachment of the certificate. The promulgation certificates consist of several provisions. These provisions are:

a. identity of the company, including the ownership of the company.
b. Duration of the licenses/coordinate and map of concession area location (exact stipulation of location attached on the annex).
c. Obligation to produce annual Work and Budget Plan within sixty days of the effective date.
d. Obligation to implement annual Work and Budget Plan within ninety days of approval by relevant unit.

The mining licenses document also contain several attachments as part of the above promulgation certificate. This includes:

a. Attachment I : Map of the Concession Area.
b. Attachment II : Coordinate location of the concession area.
c. Attachment III: The rights and obligations of the concessionary holder. In this attachment, the government stipulates several obligations, among others, obligation to deposit money as guarantee of the project, to conduct Environmental Impact Assessment, to submit annually Work and Budget Plan, to report the implementation of Work and Budget Plan regularly, i.e., trimonthly, six-monthly.

IUPK/IUPK-OPK

As discussed previously, there are two other types of active licenses, the IUPK and IUPK-OP. the difference between the general IUP and IUPK/IUPK-OP situates in the status of spatial planning of the concessionary area. The IUP concessionary area comes from a regular planning process, whereas IUPK/IUPK-OP comes from state reserve area due to its strategic value and conservation of the resources. The status of state reserve area can be changed into mining concessionary area for several considerations, as follow:56

1. The fulfillment of domestic industry raw material and energy.
2. Source of state revenue/foreign exchange.
3. The potential driving force for new economic development.
4. Change of area status.

56 Amendment Number 22 Article 27 Law Number 3 of 2020.
57 Amendment Number 21 Article 28 Law Number 3 of 2020
5. Technological and investment needed.

Others license such IUPK is granted by the Ministry in considering regional’s interest. In one WIUPK, it is only granted one IUPK for one type of mineral, either metal or coal. IUPK holders who find other minerals in the managed WIUPK are given priority to exploit them by applying for a new IUPK to the Minister. However, if not interested, the IUPK holder may state so and is obligated to protect those other minerals from being exploited by other parties. The Minister is the one who has the authority to transfer this to other parties.58

In obtaining IUPK, the SOE and Local Owned Enterprise are prioritized, while private institution must participate in WIUPK auction.59 The auction is conducted by considering several factors, such as (1) the size of auctioned WIUPK; (2) administrative/management capability; (3) technical and environmental management capability; and (4) financial capability.60

Generally, IUPK consists of two stages: (1) IUPK Exploration which includes general investigation, exploration, and feasibility study; and (2) IUPK Production Operation that covers construction, mining, processing and refining activities, as well as transportation and sales. The IUPK holders may conduct partial or entire activities.61 The government ensures that IUPK exploration holder is guaranteed to obtain IUPK Production Operation as the continuity of mining business activity.62 The IUPK Operation Product is granted to Indonesian legal entity that has data research on feasibility study.63

The table below shows the information that must be submitted in IUPK proposals:

| Table V: Information Contain in IUP |

<table>
<thead>
<tr>
<th>IUPK Exploration64</th>
<th>IUPK Product Operation65</th>
</tr>
</thead>
<tbody>
<tr>
<td>company name;</td>
<td>company name;</td>
</tr>
<tr>
<td>area and location of the territory;</td>
<td>area size;</td>
</tr>
</tbody>
</table>

---

58 Article 74 Paragraph (1) – (7) Law Number 4 of 2009.
59 Article 75 Paragraph (3) and (4) Law Number 3 of 2020.
60 Article 75 Paragraph (5) Law Number 3 of 2020.
61 Article 76 Paragraph (1) and (2) Law Number 4 of 2009.
62 Article 77 Paragraph (1) Law Number 4 of 2009.
63 Article 77 Paragraph (2) Law Number 4 of 2009.
64 Article 78 Law Number 4 of 2009.
65 Article 79 Law Number 4 of 2009.
<table>
<thead>
<tr>
<th>c.</th>
<th>mining sites;</th>
</tr>
</thead>
<tbody>
<tr>
<td>d.</td>
<td>processing and refining locations;</td>
</tr>
<tr>
<td>e.</td>
<td>transportation and sales;</td>
</tr>
<tr>
<td>f.</td>
<td>investment capital;</td>
</tr>
<tr>
<td>g.</td>
<td>the duration of the activity stage;</td>
</tr>
<tr>
<td>h.</td>
<td>land problem solving;</td>
</tr>
<tr>
<td>i.</td>
<td>environment, including reclamation and post-mining;</td>
</tr>
<tr>
<td>j.</td>
<td>reclamation guarantee fund and post-mining guarantee;</td>
</tr>
<tr>
<td>k.</td>
<td>the validity period of the IUPK;</td>
</tr>
<tr>
<td>l.</td>
<td>extension of IUPK;</td>
</tr>
<tr>
<td>m.</td>
<td>rights and obligations;</td>
</tr>
<tr>
<td>n.</td>
<td>development and empowerment of communities around mining areas;</td>
</tr>
<tr>
<td>o.</td>
<td>taxation;</td>
</tr>
<tr>
<td>p.</td>
<td>fixed contribution and production fee as well as share of state/regional income, which consists of profit sharing from net profit since production;</td>
</tr>
<tr>
<td>q.</td>
<td>dispute resolution;</td>
</tr>
<tr>
<td>r.</td>
<td>occupational Health and Safety;</td>
</tr>
<tr>
<td>s.</td>
<td>mineral or coal conservation;</td>
</tr>
<tr>
<td>t.</td>
<td>utilization of domestic goods, services, technology and engineering and design capabilities;</td>
</tr>
<tr>
<td>u.</td>
<td>application of good economic and mining engineering principles;</td>
</tr>
<tr>
<td>v.</td>
<td>development of Indonesian workforce;</td>
</tr>
<tr>
<td>w.</td>
<td>mineral or coal data management;</td>
</tr>
<tr>
<td>x.</td>
<td>mastery, development and application of mineral or coal mining technology; and</td>
</tr>
</tbody>
</table>
ownership divestment.

Generally, the details provisions of IUPK are similar to the other mining licenses, notably, IUP as discussed in previous section. Since IUPK has a much more strategic value, and sometimes involve big foreign entity, it has much more complex structured rights and obligations. Each of the rights and obligations has a unique characteristic to be accommodated. For some concession area given before the enactment of Mining Law 2009, the rights and obligation has been structured through

Coal Agreement (*Perjanjian Karya Pengusahaan Pertambangan Batu Bara (PKP2B)*) for coal and Mineral Contract of Work (*Kontrak Karya (KK)*) for mineral.66

Generally, the contract structure and term and conditions are similar for between two contracts. The difference between contract lies on individual contractors, for instance the PKP2B for Kaltim Prima Coal is required to have a SoE partners, whereas on the Freeport CoW 1991 does not require CoW. Both PKP2B and CoW, structure are as follows:

66 This detail provisions are modelled based on Freeport Contract of Work 1991, and PKP2B Kaltim Prima Coal.
<table>
<thead>
<tr>
<th>Section</th>
<th>Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Definitions</td>
<td>General terms/recitals of the agreements of and technical definitions contain in the contract.</td>
</tr>
<tr>
<td>2</td>
<td>Agreement Area</td>
<td>Size of mining areas, and mining areas relinquishment clauses.</td>
</tr>
<tr>
<td>3</td>
<td>Modus Operandi</td>
<td>Defines the relationship structure, decision making process and structure between Indonesian Government, c.q., represented by State owned enterprises and private mining contractors.</td>
</tr>
<tr>
<td>4</td>
<td>Work, Program, Expenditure and Reports</td>
<td>Define obligation of mining contractors to draw up annual plan to conduct mining activities in the concessionary areas, spending investment calculated based on per square kilometers, and obligation for quarterly report in mining activities, data confidentiality clauses.</td>
</tr>
<tr>
<td>5</td>
<td>Finance and Security Deposit</td>
<td>Obligation to deposit certain amount of money, and obligation from the mining contractors to bare all expenses related to mining activities.</td>
</tr>
<tr>
<td>6</td>
<td>General Survey Period</td>
<td>Defines duration of survey period, and procedure to mine economically exploitable coal, if ever found, including obligation to put a deposit based on determination under section 5 above.</td>
</tr>
<tr>
<td>7</td>
<td>Exploration Period</td>
<td>Defines the length of exploration period and its obligations, and notification procedure regarding to the finding.</td>
</tr>
<tr>
<td>8</td>
<td>Feasibility Studies Period</td>
<td>Defines the obligation to conduct feasibility study to determine the economic and commercial feasibility in producing the coal, including to give data to Government the plan to develop mining facilities.</td>
</tr>
<tr>
<td>9</td>
<td>Construction Period</td>
<td>Defines obligation to construct mining facilities</td>
</tr>
<tr>
<td>10</td>
<td>Operating Period</td>
<td>Defines obligation to operate and duration of operation of mining facilities.</td>
</tr>
<tr>
<td>11</td>
<td>Taxes and Sharing of Production</td>
<td>Defines the sharing of production between government and mining contractors, taxes obligation and calculation, and any other payment, and withholding taxes arrangement.</td>
</tr>
<tr>
<td>12</td>
<td>Marketing</td>
<td>Guarantee to market, sales, and export coal production, and consideration to meet domestic demand from mining contractors.</td>
</tr>
<tr>
<td></td>
<td>Clause Description</td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>13</td>
<td>Protection Against Waste and Pollution</td>
<td>Obligation to adhere the prevailing laws, including conducting Environmental Impact Assessment and mitigate the adverse impact of mining activities to the environment.</td>
</tr>
<tr>
<td>14</td>
<td>Equipment</td>
<td>Title/ownership of the equipment purchased under work and budget planning, and tax treatment to such equipments.</td>
</tr>
<tr>
<td>15</td>
<td>Payment to Batubara (SoE)/Government of Indonesia</td>
<td>Payment to government of Indonesia (dead rent) based on hectares.</td>
</tr>
<tr>
<td>16</td>
<td>Books, Accounts, and Audits</td>
<td>Audit and bookkeeping responsibilities from both parties.</td>
</tr>
<tr>
<td>17</td>
<td>Payment and Currency</td>
<td>Place (bank/financial institutions) of payment, currency, guarantee of remittance, and report obligation to Indonesia central bank</td>
</tr>
<tr>
<td>18</td>
<td>Employment and Training of Indonesian Personnel</td>
<td>Obligation to us Indonesia national personnel, based on technical expertise/skills.</td>
</tr>
<tr>
<td>19</td>
<td>Enabling Provisions</td>
<td>Guarantee of mining activities from government, security, and deal with local communities, and guarantee of activities.</td>
</tr>
<tr>
<td>20</td>
<td>Suspension of Operations</td>
<td>The rights from the contractors to suspend activities due to economic situation.</td>
</tr>
<tr>
<td>21</td>
<td>Force Majeure</td>
<td>Force majeure clauses that include how to exercise force majeure in the performance of the contract, and conditions that constitute force majeure.</td>
</tr>
<tr>
<td>22</td>
<td>Default</td>
<td>Defines breach of contract, or non-performance of contract procedure, i.e., notification for defaulting on payment, etc.</td>
</tr>
<tr>
<td>23</td>
<td>Settlement Disputes</td>
<td>Dispute settlement on the performance of the contract, appointment of arbitration as forum for settlement dispute.</td>
</tr>
<tr>
<td>24</td>
<td>Termination</td>
<td>Defines termination of contract, notification procedure, and condition of termination.</td>
</tr>
<tr>
<td>25</td>
<td>Co-operation in Regard to Regional Infrastructure</td>
<td>Obligation to provide and upgrade regional infrastructure, among other, employee and personnel accommodation, and involve in the planning of infrastructure.</td>
</tr>
<tr>
<td>26</td>
<td>Participant and Promotion of National Interest</td>
<td>Requirement for foreign invest divestment and participating interest for Indonesia national, including the price of the share of the contractors.</td>
</tr>
<tr>
<td>27</td>
<td>Miscellaneous Provisions</td>
<td>Formal correspondence address, rule of interpretation of the contract, and choice of governing laws, i.e., Indonesian law.</td>
</tr>
</tbody>
</table>
### Revision of Certain Terms of this Agreement

The limit of contract can be revised or amended i.e., 5 years.

### Assignment

Transfer of ownership of the coal, and the obligation from government approval, if such transfer occurred.

### Term

Duration of the contract, and extension of operating period

### Annexure A

Description of Agreement Area/Coordinate points

### Annexure B

Map of Agreement Area/visualization of map in 2 d

### Annexure C

List of Mining Authorization affecting the agreement Area/previous mining activities

### Annexure D

Rules of Computation of Corporation Tax

### Annexure E

Agreement Pursuant to Article 17 (currency exchange agreement)

### Annexure F

List of Useful or Economic Asset Lives

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**Mineral and Coal Mining Contract/License Implementation and Operation Documents**

Apart from the contract, there are several documents required in the implementation of the contracts and the operation of the contract. As discussed in Section B, many of the information requested by the public contain in these documents. These documents are as follows:
Table VII:
Contracts/Licenses Implementation Documents for Mining and Coal

<table>
<thead>
<tr>
<th>Documents</th>
<th>Description</th>
<th>Custodian of the Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan of Work &amp; Budget (Rencana Kerja Anggaran Belanja)</td>
<td>As part of document to implement the licenses, and government monitoring tool.</td>
<td>MoEMR</td>
</tr>
<tr>
<td>Final Report on Exploration Study</td>
<td>Report on exploration activities</td>
<td>MoEMR</td>
</tr>
<tr>
<td>Feasibility Studies</td>
<td>Report on the feasibility of the project, technically and financially</td>
<td>MeEMR</td>
</tr>
<tr>
<td>Izin Usaha Pinjam Pakai Hutan (IUPPKH)/Operation Licenses for Forest Use.</td>
<td>Special licenses for utilization of forest areas, where mining activities occurred within designated forest area</td>
<td>Ministry of Environment and Forestry</td>
</tr>
<tr>
<td>Environmental Assessment (EIA)</td>
<td>To evaluate the environmental (nature and social) impact and its mitigation</td>
<td>Ministry of Environment and Forestry</td>
</tr>
</tbody>
</table>
CHAPTER III: CHALLENGES IN CONTRACT/LICENSE DISCLOSURE

Generally, there are two challenges in contract/licenses disclosure in Indonesia. These challenges come from legal loopholes in the PIT Law 2009 and its implementing regulations, and misinterpretation of “public institutions” phrase by SKK Migas in Oil and Gas Sectors.

1. CHALLENGES IN CONTRACT LICENSES DISCLOSURE: OIL AND GAS SECTORS

There are four identifiable data/information custodians related to the Oil and Gas sector: (i). The Ministry of Energy and Mineral Resources, (ii). The SKK Migas; (iii). The Contractors; (iv). The IDX (Indonesian Stock Exchange).

A. THE MINISTRY OF ENERGY AND MINERAL RESOURCES, C.Q., DIRECTORATE OF OIL AND GAS

The MoEMR has developed a dedicated website page that is managed by PPID. Additionally, it also has provided relatively specific information on mining operation territory through OneMap website. The PPID has published a list of publicly available data by promulgating PPID Decision Number KEP-1/PPID/2012 on Public Information Availability Ministry of Energy and Mineral Resources Year 2021 (PI MoEMR 2021). The PI MoEMR 2021 decision lists 511 publicly available information, which from the 511 publicly available information, 70 publicly available documents related to oil and gas sectors. However, from the 70 publicly available documents, there is no oil and gas listed as publicly available documents. The status of oil and gas contracts as publicly available document is unclear. In 2020 MoEMR report, it has been stipulated that the consequential harm test for oil and gas contract is still ongoing due to abundant document/information need to be tested.

However, the MoEMR has provided a partial information on information contain in the contract through OneMap website. The OneMap website is a web-based information system that provide information based on thematic map visualization. This map was based on Corruption Eradication Commission recommendation through Energy Sectors on Coordination and Supervisory program (Korsup Energi).

67 https://ppid.esdm.go.id/index.php
68 https://onemap.esdm.go.id/about_us.html
The OneMap policy was designed along President Decision Number 9 Year 2016 on Implementation Acceleration of OneMap Visualization on Scale 1 : 50.000. The OneMap consists of information and data related to general information on:

1. Work Area of Conventional Oil and Gas map;
2. Work Area of Non-Conventional Oil and Gas map;
3. Well locations map;
4. 2D Seismic map;
5. 3D Seismic map;
6. Utility on household gas distribution map;
7. LNG refinery map;
8. Gas refinery map;
9. LPG refinery map;
10. Oil and Gas refinery map;
11. One price petrol distribution map;
12. Regular petrol distribution map;
13. Refueling and Distribution of Bulk Elpiji station map;
14. Refueling gas station; and
15. Refueling depot for Airplane.
Picture I:
General OneMap Data Visualisation

(source: https://geoportal.esdm.go.id/migas/)

Picture II:
Example of general information on Work Area (Offshore Timor Sea I)

(source: https://geoportal.esdm.go.id/migas/)
Apart from PPID and OneMap, there is also another web-based information channel managed by MoMR that is Migas Data Repository 2.1. This web-based information canal is a closed information canal, which means that someone who wants to access the information should be registered first before he/she can access any data. Much of the data contain the OneMap does not correlate contain information related to the information in contract, it only contains technical information about technical aspect of the geology of the areas.

Table VIII:
Summary of Contract Information Disclosed in OneMAP Website

<table>
<thead>
<tr>
<th>Information in One Map</th>
<th>Information in Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of the parties (Legal Institution)</td>
<td>The names and address of the parties and recitals.</td>
</tr>
<tr>
<td>Mining Phase</td>
<td>n/a</td>
</tr>
<tr>
<td>Duration of Contract</td>
<td>Chapter II and XVIII of the Contract</td>
</tr>
<tr>
<td>Map of the Work Area</td>
<td>Annex B</td>
</tr>
</tbody>
</table>

The MoMR has disclosed partial information/data contain in the contract. However, most of the data/information provided are still on aggregate level. At specific level, such as block/contractors’ level, the data/information disclosed are still limited on expiration date, and general location of the working areas, as indicated in picture II. Some of the key information/data is still unavailable for the public to access. These key information/data are:

1. Rights and Obligation of the parties:
   a. Fiscal obligations (government takes, contractor takes, cost recovery arrangements).
   b. Terms of relinquishment.
   c. Terms of abandonment & site restoration.
   d. Terms of transfer of ownership.

70 https://datamigas.esdm.go.id/UserAuthentication/Login?ReturnUrl=%2F
2. Other materials/substantive information the public interested to know:
   a. Allocation/disbursement of community development fund.
   b. Cost recovery realization for each work area,
   c. Specific oil production in each work area.
   d. Changes of ownership.
   e. Detail information on the owners/shareholders of contractors.
   f. Geographical coordinate of the work area.

B. SKK MIGAS (OIL AND GAS UPSTREAM TASK FORCE)

The SKK Migas is a designated government agency to manage the upstream oil and gas sector. SKK Migas assumes the authority and functions of abolished BP Migas, an independent regulatory agency established under Oil and Gas Law.\textsuperscript{71} The authority of SKK Migas is to manage the operation of oil and gas contractors based on terms of oil and gas cooperation contract (KKS).\textsuperscript{72} Therefore, much of the detailed data/information at the level of contractors/working areas are in possession of SKK Migas. Unlike MoEMR, SKK Migas does not have a dedicated PPID that handles and manages public information. One of the reasons SKK Migas does not have PPID is its perception that they are not a public institution, thus they are not obliged to follow PID Law. This perception can be seen in the latest cases of information access audit (\textit{ujji akses}) conducted by Novrizon Burman in 2018. Novrizon Burman is a reporter in one of Riau Province online newspaper (riausatu.com) that were conducting access audit of data/information in the oil and gas sector. The audit was done to SKK Migas Sumbagut, a representative of SKK Migas office in North Sumatera areas. Mr. Burman requested information regarding the operation of several oil and gas blocks in Riau Province. Theses information were:

1. List of names, address, and profile of Oil and Gas contractors operating in Riau Province.

\textsuperscript{71} President Regulation Number 95 Year 2012 on The Transfer of BP Migas Authority and Functions; President Regulation Number 9 Year 2013 on The Management of Oil and Gas Upstream Sector.
\textsuperscript{72} Article 6 par. (2) Oil and Gas Law 2002
2. Corporate Social Responsibility (CSR) fund in all SKK Migas Sumbagut areas for the last three years in 2016, 2017, and 2018.

3. Contracts between SKK Migas and all of the Oil and Gas contractors in Riau Province for the last three years in 2016, 2017, and 2018.

4. Cost Recovery information of all Oil and Gas contractors operating in Riau Province for the last three years in 2016, 2017, and 2018.

5. Lifting/production of all Oil and Gas contractors (each) in Riau Province for the last three years in 2016, 2017, and 2018.

6. Oil and Gas production of all Oil and Gas contractors in Riau Province for the last three years in 2016, 2017, and 2018.

SKK Migas Sumbagut refused to provide the information. The refusal made its way to the information litigation process in Riau Province Information commission and all the way to the Supreme Court. One noticeable argument to the refusal was that SKK Migas insisted that they cannot be considered as a public institution. SKK Migas' arguments were flawed and had been refuted by the Court. In its judgment, the Court declared SKK Migas as part of public institutions since its budget comes from the state budget.73 Another important note from the above case is the ruling of the Supreme Court that ruled that data/information contained in the contract “is not obliged to be given to the public”.74 From this wording, it can be deduced that the Supreme Court does not intent to declare such document as classified documents. Furthermore, the Supreme Court position in that decision is problematic. The Supreme Court ruling does not give any reasons as to why oil and gas contracts is not obliged to be given to the public. The lack of reasoning and consideration in the judgment has raised the question whether the decision should be considered as binding to future cases, even as to question whether the validity of the ruling is valid at all.75

73 Court Decision Number 109/Pdt.Sus-KIP/2019/PN.Jkt.Sel, p.28 – 29
74 Supreme Court Decision Number Number 211 K/Pdt.Sus-KIP/2020, p.4
75 In Indonesia legal system, this type of decision that provide inadequate consideration for the judgment is considered as non-executable decision (onvoldoende gemotiveerd). Consequently, the binding value of such judgement is doubtful. However, special procedure in the court require to declare this decision as non-executable. see Bagir Manan, Supreme Court Chief of Justice 2001 – 2008, Pidato Rekarnas Peradilan Bandung 2003 (Courts National Work Meeting Speech 2003) in Memulihkan Peradilan Yang Berwibawa dan Dihormati : Pokok-Pokok Pikiran Bagir Manan Dalam Rakernas (Reviving an Honorable and Respected Courts : Series of Bagir Manan Though in Court National Work Meeting), p. 47
The other data/information custodian is the company itself. While there is a strong case to argue that private contractors are not considered as public institutions under the PIT Law 2009, there is an avenue to collect the data/information regarding contracts/licenses through Indonesia Stock Exchange (IDX). However, this avenue is limited to contractors that have been listed as a public company/Issuers in the IDX. There are a sizable extractive industry contractors listed in IDX. The IDX lists contains 69 energy contractors. From the 69 energy contractors 42 of those contractors are coal mining contractors, 9 oil and gas contractors, and 11 metals & other minerals contractors.

The information transparency obligation comes from Article 85 – 89 Law Number 8 Year 1995 on Stock Exchange. The obligation further regulates in Indonesia Financial Services Authority (FSA) Number 31/POJK.045/2015 on Information Transparency on Material Facts by Issuers or Public Contractors, IDX Regulation Number: Kep-306/BEJ/07-2004 on Regulation I-E on The Obligation to Disclose Information, and Capital Market Legal Consultant Association (HKHPM) Decision Number: Kep.02/HKHPM/VIII/2018 on Legal Due Diligence for Stock Exchange (HKHPM Standard). These regulations oblige listed contractors to disclose any relevant information or facts, events that could affect the price of stocks in the stock exchange, and decision of investors, potential investors or other interested parties to the information or facts. As per HKHPM standard, the relevant/important information also includes information on licenses/contracts regarding the operation of contractors.

Unfortunately, the final presentation of the information disclosure does not provide the contracts/licenses itself. Unlike other Stock Market, the regulations and practices do not require for contractors to disclose the documents cited in their company prospectus submitted to IDX.

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76 https://www.idx.co.id/data-pasar/data-saham/daftar-saham/
80 Article 6 Decision Number: Kep.02/HKHPM/VIII/2018 on Legal Due Diligence for Stock Exchange
81 In the US Stock Market, the SEC require material information disclosure, including, the contract, with modification (redaction) of sensitive information that can constitute competitive harms. Nonetheless, it is important to note that this practice still not confirm with EITI Requirement 2.4 since the EITI Requirement 2.4 requires an actual disclosure without redaction. See 17 CFR Securities and Exchange Commission No. 33-10618; 34- 85381; IA-5206; IC-33426; File Np. S7-08-17 RIN 3235—AMOO ref Modernization and Simplification of Regulation S-K.
In conclusion, contract practices in oil and gas have not complied with 2.4 requirement. The 2.4 requirement requires actual contract disclosure. The Guidance Note Requirement 2.4 has outlined several steps in contract disclosure. In the fifth steps, the Guidance Note stipulates the need for full actual disclosure through systematic disclosure, i.e., via Government website, Free Access, user

(source : Indonesia Stock Exchange)\(^{82}\)

\(^{82}\) https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/202109/c4a72214d1_2142c87bd3.pdf
friendly access, and provide updated database of active contract list. However, this report also notes on the existence of OneMap website that contain partial information contain in the data. Additionally, the existence of MDR 2.0 also notable information canal that indicates the willingness of Indonesia government to embrace contract disclosure. These two information canals can be enhanced further as a part of systematic disclosure platform required in the Guidance Note Requirement 2.4 by providing full text of the oil and gas contract.

Table IX: Summary on Legal Barriers/Challenges for Contract Disclosure

<table>
<thead>
<tr>
<th>Institution</th>
<th>Challenges</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>MoEMR c.q., PPID</td>
<td>Unfinished consequential harm test for contract disclosure</td>
<td>The MoEMR, c.q., PPID needs to expedite the consequential harm test that involves all stakeholder in MSG</td>
</tr>
<tr>
<td>SKK Migas</td>
<td>Absent of PPID in SKK Migas</td>
<td>To establish PPID in SKK Migas as part of obligation under Law Number 4 of 2008</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>Declare oil and gas contract as classified information</td>
<td>Public, i.e., CSO needs to challenge this ruling through available mechanism, i.e., special cassation.</td>
</tr>
<tr>
<td>IDX/FSA</td>
<td>Does not oblige full contract disclosure as attachment to material information</td>
<td>To change relevant regulation from FSA or IDX to require full contract disclosure as requirement for freedom of information in IDX (Notes : the IDX and FSA are not part of MSG)</td>
</tr>
</tbody>
</table>

2. CHALLENGES IN LICENSES DISCLOSURE IN MINERAL AND COAL MINING SECTORS

As mentioned previously, the mining sector has a different legal regime with the oil and gas sector. Consequently, there is a significant difference in the state institutions who act as the custodian of the licenses/contracts. After the enactment of the Mining Law Amendment 2009, the management of

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83 EITI Requirement 2.4 : Contracts Guidance Note, p. 21 - 25
mining has been centralized to Ministry of Energy and Mineral Resources. Consequently, there are only two relevant institutions in discussing contract disclosure in the mineral and coal sectors, namely, The Ministry of Energy and Mineral Resource, c.q., Directorate of Mineral and Coals.

A. THE MINISTRY OF ENERGY AND MINERAL RESOURCE, C.Q., DIRECTORATE OF MINERAL AND COALS

Generally, the situation of license disclosure in mining sectors in MoEMR is similar to those of the Oil and Gas sector. MoEMR has established PPID, and part of the license information has been disclosed systematically in the two websites: Mining One Data Information (MODI) and OneMap. Unfortunately, the MoEMR has declared that licenses/contract in mineral and coal sector as classified documents. This is done through the promulgation of Consequential Harm Test Document Number 1/2020

The reason to classify contract as classified document is based on the protection of competitive harm. Furthermore, the PPID also stipulates that fear that the company will sue government for wrongdoing, if the contract is disclosed, since the contract is considered as company documents.\textsuperscript{84}

\textsuperscript{84} Lembar Pengujian Konsekuensi Nomor (Consequential Harm Test Document) Number 1/07/2018/PPID, dated 30 July 2018 <https://drive.esdm.go.id/wl/?id=sf4KdhTC6QGFe0coQQGh0hbBiv2MASR>
<table>
<thead>
<tr>
<th>Information</th>
<th>Legal Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Documents PKP2B and its subsequent amendment</td>
<td>Art. 6 (3) Law Number 14 of 2008.</td>
</tr>
<tr>
<td></td>
<td>Article 17 letter b, d, and e Law Number 14 of 2008</td>
</tr>
<tr>
<td></td>
<td>Article 4 number 4.8 PKP2B</td>
</tr>
<tr>
<td></td>
<td>Article 1338 Civil Code</td>
</tr>
<tr>
<td></td>
<td>Potential litigation to the government from contractors for wrongdoing in disclosing company contract</td>
</tr>
<tr>
<td></td>
<td>KK is a private agreement between company and government that require company approval to be given</td>
</tr>
<tr>
<td></td>
<td>Differences clauses between companies, potentially invite objection from other companies</td>
</tr>
<tr>
<td></td>
<td>To protect company from potential competitive harm. Public can access part of the contract information through MODI and MOMI</td>
</tr>
<tr>
<td></td>
<td>To protect data and information possess by the state, and to avoid misuse of data/information for irresponsible parties</td>
</tr>
<tr>
<td></td>
<td>Until the end of licenses duration</td>
</tr>
</tbody>
</table>

(source: Consequential Harm Test Documents Number 002 of 2019 on Classified Information on Coal and Mining)
As mentioned earlier, the MoEMR has indeed disclosed partial information in two information platforms, MODI and OneMap Data. The MODI is a web-based platform that consists of information related to Minerba sectors. The data/information disclosed on the web is aggregate/summary data on several information related to Industry. These data/information as follows:

1. state revenue;
2. fiscal information for local government (DBH);
3. investment in the sector;
4. coal production;
5. sales of Minerba commodities;
6. smelter construction;
7. reclamation;
8. Employment statistic; and
9. Permit/Licenses.

MODI also consists of specific data on contractors, such ownership, board of directors and address of the contractors, as well as licenses information. However, the data/information is given without attachment of the full text of the contracts/licenses.
**Picture IV:**
Organizational Information of ADARO Energy

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Address</th>
<th>Position</th>
<th>Telephone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PT. Adaro Energy</td>
<td>Jalan Adaro, Kec. Tahu, Kab. Barito Kuala, Prov. Kalimantan Tengah</td>
<td>President Director</td>
<td>081234567890</td>
<td><a href="mailto:adaroenergy@esdm.go.id">adaroenergy@esdm.go.id</a></td>
</tr>
<tr>
<td>2</td>
<td>PT. Adaro Energy</td>
<td>Jalan Adaro, Kec. Tahu, Kab. Barito Kuala, Prov. Kalimantan Tengah</td>
<td>Director</td>
<td>081234567890</td>
<td><a href="mailto:adaroenergy@esdm.go.id">adaroenergy@esdm.go.id</a></td>
</tr>
</tbody>
</table>

(Source: MODI)

**Picture V:**
IUP-K ADARO Operation

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Address</th>
<th>Position</th>
<th>Telephone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>OPPORE</td>
<td>Jalan Adaro, Kec. Tahu, Kab. Barito Kuala, Prov. Kalimantan Tengah</td>
<td>Manager</td>
<td>081234567890</td>
<td><a href="mailto:oppore@esdm.go.id">oppore@esdm.go.id</a></td>
</tr>
</tbody>
</table>

(Source: MODI)

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85 https://modi.esdm.go.id/
86 https://modi.esdm.go.id/portal/detailPerusahaan/53?jp=3
Additionally, the MoEMR has also disclosed other information contain in the licenses/contract through OneMap website. The information related to contracts/licenses is similar to the information given in the OneMap website in Oil and Gas.

Table XI:
Summary of Contract Information Contain in MODI and OneMAP

<table>
<thead>
<tr>
<th>Information on MODI/OneMAP</th>
<th>Information in Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of the Parties</td>
<td>Promulgation of the Licenses (Surat Keputusan)</td>
</tr>
<tr>
<td></td>
<td>Name and Address of Parties and Recitals (CoW/CCOW)</td>
</tr>
<tr>
<td>Mining Phase</td>
<td>n/a</td>
</tr>
<tr>
<td>Duration of Contract</td>
<td>Section 31</td>
</tr>
<tr>
<td>Map of Work Area</td>
<td>Annex B</td>
</tr>
</tbody>
</table>

The contract information in the MoDI and OneMap are relatively very limited, from 30-31 sections and 4 – 6 annexures of the contract, the two information canals only provide 3 information contained in the contracts/licenses.

B. STOCK MARKETS (FSA – IDX)

The situation in the stock markets for mining contractors is similar to the oil and gas contractors. All regulations in FSA and IDX also apply for the mining sectors. Likewise, the challenges in disclosing contract/information are also related to regulations that do not require contractors to disclose supporting documents, i.e., contracts/licenses in supporting their prospectus.

Table XII:
Summary of Legal Challenges in Contract/Licenses Disclosure in FSA-IDX
<table>
<thead>
<tr>
<th>Institutions</th>
<th>Challenges</th>
<th>Actions Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>MoEMR</td>
<td>Proclaims the Contract/licenses as classified information</td>
<td>To evaluate and review the proclamation by conducting a comprehensive consequential harm test that involve all stakeholder within the MSG</td>
</tr>
<tr>
<td>IDX/FSA</td>
<td>Does not oblige full contract disclosure as attachment to material information</td>
<td>To change relevant regulation from FSA or IDX to require full contract disclosure as requirement for freedom of information in IDX (Notes: the IDX and FSA are not part of MSG)</td>
</tr>
</tbody>
</table>
CHAPTER III: RISKS AND OPPORTUNITIES IN CONTRACT/LICENSES OPENNESS

1. RISKS

From the above discussions, there are several risks associated/perceived with disclosing contract/licenses in Indonesia context: (i). potential infringement of personal information or proprietary information; (ii). potential cause for competitive harm if publicly disclosed; (iii). protection of natural resources; (iv). potential litigation on wrongdoing; and (v). jeopardizing contractors mining operations.

A. POTENTIAL INFRINGEMENT OF PERSONAL INFORMATION OR PROPRIETARY

One of the reasons for many government agencies categorizing extractive industries contracts/licenses as classified public documents is due to contract/licenses information containing personal/information data or proprietary information. For instance, in the Decision of the Aceh Province Government of Classified Information, it states that extractive licenses are classified because they contain personal information of the license holder.\(^\text{87}\)

While this reason is legitimate under Article 17 letter h, the extent which personal information is considered as classified information is dubious. In the licenses there are several personal information, such as, name, and address of the license holder. Nonetheless, the personal information itself does not constitute harm to be disclosed to the public. There are several precedents to this argument, on Information Commission Decision of East Kalimantan the personal information, such as, name and address was decided not to be classified information. Only personal information relates to financial information that was considered classified information, such as bank account information. Additionally, the Article 17 letter g and h PID Law defines personal information that need to be treated confidentially. This limitation is:

- Personal information relates to personal testament/will.

- Personal and family conditions.

\(^{87}\) Governor Decision Number 065/1025/2020 on Declaration of Classified Information in Aceh Provincial Government
● Medical record both mentally and physically.
● Personal test that describes a person intellectual, and psychological capacity; and
● Finance related information.

Furthermore, at the Central Government level, this information has also been qualified as not classified. In MoDI website details of name of contractors, contractors address, as well as the names of the company’s board director have been disclosed to the public. Like Information Commission approach, the Central Government only considers financial information, such as, taxation information, i.e., Tax Number is considered as classified.

Proprietary information is one of the cited reasons to disclose the contracts/licenses. From reading thoroughly on the available licenses/contracts structure, the team does not find any proprietary information, i.e., related to intellectual or business property information. The detail provisions/stipulation on the licenses/contracts only contain stipulation on legal arrangement rights and obligation of the parties, as well as accounting and costs arrangements. In this team opinion, these two information does not constitute any harm or breach to proprietary information. However, in mining Licenses contract, (CoW/CCoW), does contain designated proprietary information. Nonetheless, this stipulation applies to data confidentiality that are given by contractors as result of their mining activities, i.e., location of plan drills, copies of drill holes, and detail geophysical maps.88 These information does not appear in the contracts/licenses itself, rather it will appear in the quarterly report of the contractors to government.89

In conclusion, the validity of this risk is questionable from legal analysis point of view. It can be concluded that after careful reading of the available contract/licenses, this report cannot find any substantial evidence to support the idea that contract/licenses will constitute harm to personal or proprietary information.

88 Article 4.7 …. in addition the contractor shall turn over to Government: (i). maps indicating all places in agreement areas in which contractor shall have drilled holes or sunk pits; (ii). copies of logs of such drilled holes and pits and assay result with respect to any analyzed samples recovered from them; and (iii). copies of any geophysical maps of the agreement area which may have been prepared by contractor. (Coal Contract of Work)
89 Article 4.8 Government shall not disclose any data obtained by it pursuant to Article 4.7 hereof to third parties without first obtaining the written consent of Contractors. Any data which contains specific know-how of Contractors, its sub-contractor or affiliates and which shall have been identified as such by contractors., shall only be used by government in relation to the management of the Coal Operations, and shall note be disclosed by government to third parties without the written consent of Contractor, and such specific know-how shall at all times remains the sole property of the contractors .... (Coal Contract of Work)
B. POTENTIAL CAUSE FOR COMPETITIVE HARM

The reason to classify public information as potential cause for competitive harm is sanctioned under Article 17 letter b. The original intent for this article is to protect contractors from losing their competitiveness if a certain information is disclosed to the public. The documents that exclude contract/license information do not further discuss, why and which information has the possibility of creating competitive harm. The lack of reasoning and identifiable information made it difficult to assess the legitimacy of the reasoning.

From reading the contract/license structure, this report does not find any legitimate concern for a specific information if it’s disclosed to the public, potentially creating competitive harm. Much of the information that potentially create competitive harms situates in the implementing documents such as RKAB/POD. According to an interview that the team conduct with one of the contractor’s managements, the RKAB/POD does contain sensitive information that cause for competitive harms. For instance, in the RKAB document contains rates of sub-contractors in doing mining activities. These rates can differ from one company to the other, which in turn could create problems for the sub-contractor’s business strategies. Additionally, as mentioned in previous section, the contract also stipulates that confidentiality clauses on information on detail geophysical data, drilled hole’s location, and planned drilling location. This information also contains in RKAB as part of report to the government.

C. PROTECTION OF NATURAL RESOURCE

The argument to classified contracts/licenses based on protecting Indonesia national wealth is prominent in the mind of Indonesian officials. This mindset has created resentment among Indonesia public officials to disclose extractive contracts/licenses. Unfortunately, the decision that uses this argument does not elaborate to what information and reason to the extent why disclosing contract/license could cause harm to the natural resource wealth. Nonetheless, this argument might be legitimate for certain types of extractive commodities that relate for defense purposes, such as, radioactive minerals.

D. POTENTIAL LITIGATION ON WRONGDOING (BREACH OF CONFIDENTIALITY)

90 The team conducted an interview with Legal General Manager of Kaltim Prima Coal, one of the biggest CCoW holder operate in East Kalimantan Province.
91 For instance, East Kalimantan Province through Decision of PPID of Investment and One Roof Services Agency Number 04 Year 2019 on Classified Information declared that extractive contract/licenses as classified information.
Another argument listed in the consequential harm test document of MoEMR is potential litigation from contractors to the government for breach of confidentiality if a contract is disclosed. While there might be possible litigation action by the contractors, this report finds there will no substantial legal argument that can substantiated the litigation action for two reasons. First, as mentioned previously, there is no confidentiality clause whatsoever contain in the contract, except to protect details information contain in the quarterly report or RKAB. This document is not part of the contract/licenses. As discussed earlier, the Consequential Harm Test Number 02/2019 did mention about confidentiality clauses in Article 4 number 4.8 PKP2B. Arguably, this clause does not intent to protect the confidentiality of the contract, but to protect data result from contractor activities during the exploration and exploitation process. The data includes:

a. Maps indicating all places in the agreement area in which contractor shall have drilled holes or sunk pits;
b. Copies of logs of such drilled holes and pits and of assay results with respect to any analysed samples recovered from them; and
c. Copies of any geographical maps of the Agreement Area which may have been prepared by contractors.

Secondly, the legal position of the contract/licenses are not pure private contract. As discussed earlier, the extractive contracts are derived by constitutionally mandate for the government to control extractive resource for the benefit of the people under Article 33 of Indonesian Constitution. Thus, there are strong public element in the extractive contracts. The Constitutional Court in its decision has ruled that in order for the government to achieve its constitutional mandated role under Article 33, it requires meaningful participation of the public in the management of the natural resources. Consequently, this ruling implies that freedom of information is essential in the application of article 33, since access to information is fundamental element to achieve meaningful participation.

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**E. JEOPARDIZING CONTRACTORS’ OPERATION**

This risk does not come from any consequential harm test documents, it comes from an interview that the team conducted with a representative from Indonesia Mining Association (IMA). The IMA representative explains the risks from contracts/licenses disclosure is not so much related to the obligation of disclosure itself, but from social nuisance that potential comes from the disclosure. The social nuisance relates to the use of information by certain public to request monies, or illegally mine...
in their concessionary areas. It has than created problem in the operation of the mining operation. For instance, if a contract is disclosed than public can see our area operation, this has than attracted illegal miners (PETI) to operate in their concessionary areas.93

The illegal miner is a factual phenomenon occurred in many of mining operation. The question whether this phenomenon caused by contract/licenses disclosure needs to be discussed further. Reading from contract/licenses structure, the geographical information contain in the contract is very general, the question is whether this general information can result in the operation of illegal miners need to be elaborated further. Additionally, the phenomena of illegal miners do not relate with contract disclosure. Arguably, the problem lies from weakness in law enforcement.

In conclusion, much of the risks identified in consequential harm test documents does not provide sufficient argument to the risks associated/perceived in disclosing contract/licenses. Therefore, a comprehensive review and evaluation needs to be done to the consequential harm test documents Number 1/07/2018/PPID. The MSG along with MoEMR PPID need to conduct a comprehensive consequential harm test.

2. OPPORTUNITIES

This report identifies several opportunities in further disclosing contract/licenses: (i). the favorable positions of IC in declaring contracts/licenses as public documents; (ii). the central government commitment to accelerate open data; (iii). Utilizing Open Government Indonesia initiative; and (iv). optimizing existence information channel.

A. INFORMATION COMMISSION POSITION IN DECLARING CONTRACT/LICENSES AS OPEN PUBLIC DOCUMENT

As discussed previously, since its establishment the KIP has consistently declared that Contract/Licenses is a public document disclosed to the public. There are two recent KI decisions that declared contract/license as open public documents, namely, the Riau Province KI Decision Number 020/KIP-R/PS-A-M-A/IX/2018, and East Kalimantan KI Decision Number 0014/REG/PSI/X/2017. Both decisions have declared contracts/licenses are open documents.

93 Interview conducted with Djoko Widajatno of Indonesia Mining Association Interviewed at 7 October 2021.
One notable point from the East Kalimantan KI Decision is the acknowledgment of potential confidential information contained in the documents, notably, financial information. In the decision, KI argues that if such information is found in the requested document, such information should be redacted from the documents. Furthermore, the information commission argues that the existence of classified information in a public document does not make all information contained in the document entirely classified.94

The Information Commission position presents an opportunity to address the risks posed in disclosing contracts as discussed above. The blanket approach that classified the document rather than classified the information should be changed. Furthermore, the practice to focus on classified information has also been practiced by MoEMR as evidenced in MoDI, and One Map website. Nonetheless, the method of MoEMR in delivering the information does not confirm to the general principle in PID Law, the general principle of the PID Law requires that all public information is considered open, unless otherwise promulgated as classified. Additionally, the EITI Requirement 2.4 also require a full and actual disclosure of the documents. The Guidance Notes 2.4 stipulates that “redaction and publication of summaries of contracts are not acceptable even as interim measures under requirement 2.4, because these could potentially create more suspicion and could slow down progress in addressing legal barriers.

The MSG should adopt the position of Information Commission. Admittedly, there is question on the Supreme Court decision on Novrizon Burman versus SKK Migas that declared the contract information as classified (not open to the public).95 In regard to this, the MSG, notably from, civil society component should challenge the Supreme Court position by utilizing special appeal mechanism. As discussed previously, the lack of reasoning contain in the decision can be utilized as ground for appeal. However, this mechanism should only be utilized if there is no-agreement from on the merit of the decisions, among MSG members.

B. UTILIZING MITIGATION RISKS TECHNIQUE

The utilization of risk mitigation techniques is associated with how the information is given/present to the public. While there is no doubt a full disclosure of contract/license in its original text is imperative, for associated document of the contract/license, i.e., PoD/RKAB, might contain more classified

94 East Kalimantan Decision Number 0014/REG-PSI/X/2017, P.36
95 Bagir Manan, Loc Cit, p. 47
information can be present in alternatives technique depends on the severity risk cause, if such information disclose to the public.

The determination of mitigation risks technique needs to be done in conjunction with the consequential harm test. The consequential harm test can be used as a tool to map out the risks and determine the mitigation risks technique.

Generally, there are six disclosure techniques of public information, as follows:

<table>
<thead>
<tr>
<th>Mitigation Technique</th>
<th>Risks/Percieved Associated</th>
<th>Tools/Means</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full disclosure of the document</td>
<td>No risks associated</td>
<td>Systematic Disclosure in government/MSG member website (no restriction at all)</td>
</tr>
<tr>
<td>Digital restriction</td>
<td>Low risks</td>
<td>Systematic disclosure in government MSG/member website, Non-Shareable/downloadable documents, registered access, and etc.</td>
</tr>
<tr>
<td>Time arrangement in disclosing the information</td>
<td>Low Risks to Medium Risks</td>
<td>Systematic disclosure in government MSG/Member (selected contract disclosure, i.e., more than six years documents, etc)</td>
</tr>
<tr>
<td>Presentation of the information without disclosing the documents</td>
<td>Medium to high risks</td>
<td>Documents on request to see, no copy – notes taking only.</td>
</tr>
<tr>
<td>Redactions of information in the documents</td>
<td>High Risks</td>
<td>Systematic disclosure in government MSG/contractor’s website, redaction on several information.</td>
</tr>
<tr>
<td>Classified Information</td>
<td>Severe Risks</td>
<td>No disclosure.</td>
</tr>
</tbody>
</table>
Currently, the Indonesian government has utilized some of the above techniques in giving information related to extractive industry contracts/licenses. For instance, MoDI is a web-based access with some information of the contract without giving the documents. Likewise, public contractors who listed on IDX have also provided certain information of the contract in its prospectus that is easily available for the public to access.

In conclusion, as mentioned earlier the MoEMR through MSG should conduct consequential harm test in conjunction with the determination of mitigation technique, if any risks in disclosing the contracts. The determination of mitigation technique should also in line with EITI Requirement, where redaction and summary of contract are not acceptable under EITI requirement 2.4. However, *EITI requirement does allow for staged approach*

**Box I :**
**The Significance of Consequential Harm Test In Disclosing Extractive Contract**

Consequential harm test is a significance legal instrument provided by the PID Law 2008 to demonstrate that contract disclosure does not breach the PID Law 2008 or impose any significance harm to the operation of business operation of the extractive companies. Additionally, the use of mitigation technique outlined in this report along with consequential harm test can provide a framework on how contract disclosure should be systematically disclosed to dispell any perceived risks by EITI stakeholders, notably, the government officials and companies to the disclosure of the contract.

For instance, in a simple consequential harm test that was conducted by consultant team during a workshop with EITI stakeholders, the team finds that several perceived risks outlined in the existing consequential harm test cannot be substantiated. For instance, as discussed in Point B in Section 1 letter d, the reports cannot find any non-disclosure clauses to the information contain in any of stipulation of the contract. Consequently, there is no legal basis whatsoever, for the companies to take legal action to the government if, the government decide to disclose the contract/licenses.

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**C. OPEN GOVERNMENT AND ONE DATA INITIATIVE**

Under Jokowi leadership, Indonesia has several policies put in place regarding data/information management, namely, One Data Indonesia (ODI) policy and Open Government Indonesia (OGI) policy. The one data policy is based on President Regulation Number 39 Year 2019 on One Data Indonesia (ODI Regulation 2019). The ODI policy aims to create reliable, accountable, easy access, integrated,
transparent and user-friendly data.96 The ODI is useful to provide a coordination platform among government agencies, both central and local government, to pursue extractive industries contract/disclosure policy.97 Furthermore, since 2010 Indonesia has joined a global initiative for open government. In the Indonesian context, the initiative is translated to OGI policy. Since 2016, Indonesia has produced a National Action Plan for open government. Currently, Indonesia has adopted the 2020 – 2022 National Action Plan for Open Government Initiative produced by the Ministry of National Planning (Bappenas).98 The National Action Plan is bi-yearly document to outline government agencies action plan in disclosing information, and other open data agenda. The current OGI focuses on disclosure of procurement contracts as one of its disclosure agenda. While there is no mention of extractive industries contract/license action plan, the national action plan can be strategically utilized to pursue extractive industries contract/licenses openness.

The utilization of the above initiative is important to overcome hesitance from stakeholders, notably, local government, judges, business, and other relevant parties in extractive contract/licenses disclosure. To push this agenda, elements of MSG stakeholders can approach Open Government Indonesia secretariat to push for adoption of extractive industries contract disclosure as part of national action plan for open government in 2022 – 2024 cycle.

D. OPTIMIZING EXISTENCE INFORMATION CHANNEL (MODI/MDR 2.0/ONEMAP GEOPORTAL)

One of the biggest opportunities in pushing contract disclosure is the availability of web-based information system, i.e., MODI, OneMap initiative, and MDR 2.0, managed by MoEMR related to extractive industries contract. The existence of this website is partly in accordance with “systematic disclosure” as part of EITI Requirement 2.4.99

The existence of this website is an indication of Indonesia Government, i.e., MoEMR attempts to push and promote openness in extractive industry. This report finds the existence of the information system is part of systematic disclosure as outlined in the Guidance Note 2.4 Requirement.

The contract disclosure measure can utilize the existing information system. This can be done by enhancing the system as per recommendation from MSG in delivering the contract/licenses based on agreed mitigation technique as discussed in section b of this chapter.

96 Article 2 par.2 President Regulation 39/2019
97 The ODI creates an institutional set up for government to discuss and provide policy on data openness and management. Chapter III, Article 11 – Article 24 President Regulation 39/2019
98 https://ogi.bappenas.go.id/dokumen-rencana-aksi
99 EITI Requirement 2.4 Contracts Guidance Note, p.24
In conclusion, MSG can push website administrator to incorporate a system to disclose contracts/licenses as agreed system by the MSG members. The disclosure system should be based on risk assessment and mitigation technique as discussed previously.

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E. ESTABLISH A REWARD SYSTEM FOR COMPANIES COMPLIANCE

One of the general attitudes among mining companies and its management, notably, local companies are the question on the tangible benefit of EITI Initiative for their companies. While they understood about the demand for Environment, Society, and Governance issues and its relationship to the EITI Initiative from the ethical investors, and critical consumers, the idea is still considered as to abstract to grasp, without any significance implication to the business, and operation of the companies.

Based on the discussion, with one of the mining association representatives, to give more concrete benefit is to establish a reward system, in which, EITI Indonesia secretariate can organize a regular event for the companies to be awarded for their compliance in assisting government comply with the Guidelines.\(^{100}\) Alternatively, can also be organized the use of EITI Compliance label in their company.

The above reward mechanism suggestion is mimicking other ESG label, such as, Environmental Green Label, RSPCO Label for Palm Oil, etc. This can be seen as opportunities in Indonesia context, since the government initiative is very much depended on mining companies approval to EITI Initiative.\(^{101}\)

\(^{100}\) The discussion took place during the MSG Meeting Forum 10 November 2021.

\(^{101}\) Ibid
CHAPTER IV: CONCLUSIONS AND RECOMMENDATIONS

1. CONCLUSIONS

From the discussion above, this report can draw the following conclusion:

a. This report finds Indonesia government has developed several initiatives in disclosing contract/licenses information through web-based information channels. These initiatives are: MoDI, MDR 2.0, and One Map initiative. Generally, the information contained in the information canal is at aggregate level, such as, production data, revenue, total of licenses given, and investment. Nonetheless, there is also information at contractors/concession area level, such as, identity of contractors, size of concession areas, concession expiry date, and concession area map. The existence of this information system canal is an indication of government efforts to further comply with EITI Requirement. Additionally, in the context of Contract/Licenses Disclosure, the existence of this system can be considered as part of systematic disclosure.

b. This report concludes the EITI 2.4 requires disclosing full text of the contract along with accompanying documents, such as, any amendment, riders, and implementation documents from 1 January 2021. Additionally, the requirement encourages to disclose any contracts and licenses (i.e., PoD/RKAB, EIA and etc) that provide the terms attached to the exploitation of oil, gas and minerals and its execution thereof. Furthermore, the EITI requirement 2.4 Contract Guidance Notes also stipulates to develop a plan with definite timetable in disclosing contracts. The Indonesian PID Law has provided a legal basis for public institution to fully disclose the documents. Regarding extractive industries, the Information Commission has consistently declared extractive industries/contracts to be open public information. Any confidential information, legitimately declared as classified, contained in the contract/licenses document can be redacted from the document without classified the document entirely. However, under EITI requirements 2.4., the redaction is not acceptable because it will create more suspicion and could slow down progress in addressing legal barriers.

c. This report concludes the existing regulations does not create any legal barriers. However, the law does give authority to public institutions to classified public documents under Article 17 PID Law. Before classified a public information, the public institution via PPID is required to conduct a consequential harm test. It is in this practice conducting consequential harm test that the report finds a legal barrier, notably, in mining sectors. The PPID of MoEMR in its
promulgation of Consequential Harm Test Document Number 1/2020 has declared that all mining licenses as classified documents.

In oil and gas, such document does not exist and still yet to be decided by MoEMR PPID, however the recent Supreme Court decision regarding to Novrizon versus SKK Migas ruled that Oil and Gas contract as documents that does not oblige to be given to the public. It can be deduced that the Supreme Court does not intend to declare such document as classified documents. This report find that the Supreme Court decision does not give any sufficient reasoning to its decision. Therefore, the validity of the ruling is questionable, and should be further challenged with available legal action.

In addition, this report does not find any clauses in the contracts/licenses that indicates that the contract is stipulated as confidential.

d. This report finds five perceived risks in disclosing contracts, namely: (i). potential infringement of personal information or proprietary information; (ii). potential cause for competitive harm if publicly disclosed; (iii). protection of natural resources; (iv). potential litigation on wrongdoing; and (v). jeopardizing contractors mining operations. The risks are taken from consequential harm test conducted by MoEMR PPID and interview with the stakeholders. From the five perceived, this report cannot substantiate the risks that may warrant for classified contract/licenses. However, MSG should conduct further analysis and consequential harm test to reassess the existence of Consequential Test Document Number 1/2020, and to accelerate consequential harm test in oil and gas contracts.

e. This report notes on a legitimate hesitance from contractors to embrace disclosure due to potential risk to the mining operation. Nonetheless, it is important to note this concern does not relate to contract disclosure, it relates to the issues of weak law enforcement in safeguarding contractors exclusive right for mining. Therefore, the MSG should identify and employs risks mitigation technique to this concern. To determine appropriate risks mitigation techniques, the MSG determination must be conducted in conjunction with consequential harm test as suggested in point d. This approach can be perceived as a staged approach in fulfilling Indonesia obligation under EITI Requirement 2.4.

f. This report notes four opportunities to further pursue greater contracts/licenses openness, (i). the favorable positions of IC in declaring contracts/licenses as public documents; (ii). utilizing mitigation technique for information disclosure; (iii). Utilizing Open Government Indonesia
initiative; and (iv). optimizing existence information channel. The utilization of this opportunities can be used to develop roadmap for contract disclosure

2. RECOMMENDATIONS

In addition, this report also recommends several actions for MSG, as follow:

a. To establish a working group, consists of MSG selected members in collaboration with MoEMR Information and Documentation Officer (PPID/IDO), to conduct consequential harm tests in conjunction with determining risks mitigation technique for extractive licenses and contracts.

b. To reevaluate and reassess the Consequential Test Document Number 1/2020, and to determine risks mitigation technique in conjunction with the reevaluation and reassessment of MoEMR Consequential Test Document Number 001/2020 for Mineral and Coal sector.

c. To establish Information and Documentation Officer (PPID/IDO) in SKK Migas as part of steps in conducting consequential harm test in oil and gas sectors. The establishment of PPID in SKK Migas is needed to organize the consequential harm test and determining risks mitigation technique in contract disclosure as well facilitate systematic contracts/licenses disclosure for Oil and Gas Sector.

d. To push extractive/contract disclosure as part of the National Action Plan for Open government in next 2022 – 2024 national action plan cycle.

e. To modify MODI, MDR 2.0 and OneMap Data in accommodating contract disclosure based on mitigation technique agreed by MSG as part of staged approach.
Propose Timetable of Activities Aimed the Disclosure of Contracts/Licenses of Oil and Gas and Mineral and Coal Sectors
By December 2022

<table>
<thead>
<tr>
<th>Roadmap Items</th>
<th>Objectives</th>
<th>Activities</th>
<th>Responsibility</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>The establishment of PPID SKK Migas and Conducting Consequential Harm Test in conjunction with risks mitigation technique</td>
<td>The establishment of PPID in SK Migas is crucial roles to facilitate consequential harm test for KKS disclosure as well managing further systematic disclosure in oil and gas sector related to extractive industries openness.</td>
<td>Draft and Enacting Head of SKK Migas Decree on appointment of PPID or Assistant PPID in SKK Migas organization. Conduct consequential harm test in conjunction with determining risk mitigation on KKS disclosure with the involvement of MSG</td>
<td>Head of SKK Migas to pass a decree on appointment of PPID in SKK Migas, The newly established PPID in collaboration with MSG to conduct consequential harm test in conjunction with determining risk mitigation techniques</td>
<td>December 2021</td>
</tr>
</tbody>
</table>

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102 This roadmap has not been consulted with the MSG, but it has been presented in ESDM on the 18 October 2021.
<table>
<thead>
<tr>
<th>Roadmap Items</th>
<th>Objectives</th>
<th>Activities</th>
<th>Responsibility</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reassessing and re-evaluate Consequential Harm Test Document Number 1/07/2018 in conjunction with risks mitigation technique</td>
<td>To adopt staged approach in contract disclosure by defining the mitigation technique employs based on reassessment and reevaluation of Consequential Harm test on contracts/licenses.</td>
<td>Conduct consequential harm test in conjunction with determining risk mitigation on mining contract/licenses</td>
<td>The MoEMR PPID/PPID Assistant in Mineral and Coal Directorate in collaboration with MSG to conduct consequential harm test in conjunction with determining risk mitigation techniques</td>
<td>December 2021</td>
</tr>
<tr>
<td>Challenging Supreme Court decision on contract</td>
<td>To remove legal barrier from the decision on contract</td>
<td>Conduct legal action on the decision</td>
<td>CSO, and the party involve in the case.</td>
<td>December 2021 (submission on legal action)</td>
</tr>
</tbody>
</table>
- openness through available legal channel.\textsuperscript{103}
- disclosure for oil and gas sector
- through special appeal.

<table>
<thead>
<tr>
<th>Adopting extractive industries contract disclosure as part of open government Indonesia national action plan for 2022 – 2024 cycles.</th>
<th>To pursue further full contract/licenses disclosure</th>
<th>Conduct approach to Open Government Indonesia secretariate in accommodating extractive industries contract disclosure.</th>
<th>CSO in collaboration with MSG, i.e., EITI National Secretariate</th>
<th>December 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modifying MoDI and MDR 2.0 to accommodate contract disclosure based on mitigation technique agreed by MSG for systematic disclosure</td>
<td>To disclose contracts/licenses based on agreed risks mitigation technique</td>
<td>Modification on MoDI and MDR 2.0 to accommodate risk mitigation technique agreed based on MSG</td>
<td>PPID MoEMR in collaboration with MSG</td>
<td>December 2022</td>
</tr>
</tbody>
</table>

\textsuperscript{103} This action is optional, it can be done if there any persistent arguments from stakeholder that refer to this decision.
Annex II List of Available Contract/Licenses

Mineral and Coal Mining Sectors

As October 2021, there are 5,521 active contracts/licenses. The 5,521 contracts/licenses consist of 5,421 Mining Licenses (IUP), 3 Special Mining Licenses (IUPK), 31 CoW (KK), and 66 CCoW (PKP2B). The lists of the active licenses and contract can be found in MODI (esdm.go.id). The website does not disclose any active contracts/licenses. However, the list does provide some minimum information contain in the contracts/licenses, i.e. location, contractors institution, and duration of the contract. From 30 sections of the contracts, and 4 – 6 annexes, the two websites only provide 3 information contained in the contracts/licenses.

Oil and Gas Sectors

As per 2019, there are 65 production KKS, 77 Conventional Exploration KKS, and 35 Non-Conventional Exploration KKS listed by SKK Migas. The contract list can be found in https://www.skkmigas.go.id/contact/kkks-produksi for KKS Production https://www.skkmigas.go.id/contact/kkks-eksplorasi for KKS Exploration. Unlike the mining sectors, the oil and gas sector does not provide any information contain in the KKS. However, some information contains in the contracts, such as, the name of the blocks, duration, and map visualization can be found in https://geoportal.esdm.go.id/migas/
Books, Journals, and Reports


Mohammad Hatta, Penjabaran Pasal 33 Undang-Undang Dasar 1945, Jakarta: Mutiara, 1977

Ministry of Energy and Mineral Natural Resources of Republic of Indonesia, EITI Indonesia Report 2018 Contextual (Flexible Report), Jakarta: ESDM Ministry, 2021


Robert Pitman and Rani Febrianti, The Case for Publishing Indonesiang Mining Agreements, Natural Resources Governance Institute, September 2019.

Laws and Regulation


Indonesia Civil Code (Kitab Undang Hukum Perdata)


Law Number 22 of 2001 on Oil and Gas

Law Number 14 of 2008 on Public Information Disclosure

Law Number 4 of 2009 on Coals and Minerals as revised by Law Number 3 Year 2020.

Indonesia Government Regulation Number 61 Year 2010 on the Implementation of the Public Information Disclosure Law.

President Regulation Number 95 Year 2012 on The Transfer of BP Migas Authority and Functions; President Regulation Number 9 Year 2013 on The Management of Oil and Gas Upstream Sector.
Ministry of Energy and Mineral Resources Regulation Number 07 Year 2012 on Value Added Through Processing and Refining of Mineral

Ministry of Energy and Mineral Resources Number 05 of 2017 Offering Mechanism of Non-Conventional Oil and Gas Offering.


Governor Decision Number 065/1025/2020 on Declaration of Classified Information in Aceh Provincial Government

Commission of Information Regulation Number 1 Year 2017 on Classification of Information


Court Cases

Indonesian Constitutional Court Number: 03/PUU-VIII/2010 on Judicial Review Law Number 27 Year 2007 on Small

Indonesia Supreme Court Decision Number 197/VI/KIP-PS-M-A/2011.

Indonesia Supreme Court Decision No. 251 K/TUN/2015, 89 K/TUN/2016,

Indonesia Supreme Court Decision 614 K/TUN/2015,

First Instance (General Court) Court Decision Number 109/Pdt.Sus-KIP/2019/PN.Jkt.Sel.

News and Other