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due to force majeure

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I. Background

In March 2025, the Ministry of Energy and Mineral Resources (**MEMR**) issued MEMR Regulation No. 6 of 2025 (**MEMR Regulation 6/2025**), amending MEMR Regulation No. 6 of 2024 (**MEMR Regulation 6/2024**) concerning the completion of domestic mineral refining facilities. While MEMR Regulation 6/2024 provides guidance for holders of Production Operation Mining Business Licences (*Izin Usaha Pertambangan* or **IUP**) and Special Mining Business Licences (*Izin Usaha Pertambangan Khusus* or **IUPK**) who are finalising their smelter construction, the amendment addresses the operational obstacles faced by copper IUPK holders, particularly force majeure events that have prevented newly completed facilities from operating. To mitigate these disruptions and safeguard state revenues, MEMR Regulation 6/2025 introduces a temporary export relief framework.

II. General overview of MEMR Regulation 6/2025

1. Regulatory scope

MEMR Regulation 6/2025 establishes a targeted mechanism for copper IUPK holders whose smelters, despite being physically completed, cannot operate or require repairs due to force majeure.¹ Under this regulation and subject to ministerial approval and recommendation, eligible IUPK holders may apply for temporary export permits to sell their processed mineral products.² This provision expands the scope of MEMR 6/2024, which applies to IUP and IUPK holders across multiple mineral commodities, including copper, iron, lead and zinc, who are in the process of completing domestic mineral refining facilities and have entered the commissioning phase.³ This phase involves an assessment of the completeness and quality of the equipment and installations of the refining facilities, to ensure their operational feasibility.⁴

1. Article 2A MEMR Regulation 6/2025.

2. Article 6A paragraph (1) MEMR Regulation 6/2025.

3. Article 2 MEMR Regulation 6/2024.

4. Article 1 No. 2 MEMR Regulation 6/2024.

2. Force majeure mechanism

Force majeure is defined as an event that is beyond human control, occurs unintentionally and is inevitable.⁵ This condition must be formally determined by the Indonesian National Police and taken into account during the insurance claim process for the affected facility.⁶ This recognition serves as the legal basis for eligible IUPK holders to apply for temporary export approval for their processed mineral products. This process begins with a ministerial recommendation, followed by an export approval from the Ministry of Trade.⁷ The initial recommendation is valid for up to six months, and may be extended once for an additional three months, subject to the evaluation of the facility's repair progress.⁸

3. Documentation and export requirements

Before obtaining a recommendation from the Minister, IUPK holders must fulfil several documentation requirements. Generally, MEMR Regulation 6/2024 requires the submission of a verified physical progress report, commissioning certificate, approved Work Plan and Budget (*Rencana Kerja dan Anggaran Biaya* or **RKAB**), and updated reserve estimate.⁹

In the event of a force majeure, MEMR Regulation 6/2025 introduces a provision that specifically governs the minimum documentation required for such circumstances, which include:¹⁰

- a. a verification report confirming the completion and operational status of the facility, accompanied by a formal statement from the independent verifier (a relevant state-owned enterprise or its subsidiary)¹¹;
- b. a formal force majeure statement from the IUPK holder;
- c. supporting evidence from relevant third parties;
- d. a recovery plan detailing the timeline and scope of operational restoration;
- e. the approved RKAB; and
- f. an updated reserve estimate.

Once submitted, the Ministry will evaluate the completeness and accuracy of the application and may approve or reject the recommendation within 14 working days.¹² If rejected, the decision must be communicated in writing along with the reasons.¹³

Furthermore, these items also must accompany any request for export approval during the repair period.¹⁴ Exports under such conditions may only proceed after obtaining approval from the Ministry of Trade and must (i) meet the minimum processing thresholds and (ii) be subject to export duties.¹⁵

4. Progress report obligations

Under MEMR Regulation 6/2024, IUP and IUPK holders are required to submit physical progress updates verified by an Independent Verifier on a quarterly basis, and to report *ad hoc* when requested by the authority.¹⁶

5. Article 6A paragraph (4) MEMR Regulation 2025.

6. Article 6A paragraph (2) MEMR Regulation 6/2025.

7. Article 6B paragraph (1) and (2) MEMR Regulation 6/2025.

8. Article 6B paragraph (3), (4), and (5) MEMR Regulation 6/2025.

9. Article 6 MEMR Regulation 6/2024.

10. Article 6C (1) MEMR Regulation 6/2025.

11. Article 1 No. 6 MEMR Regulation 6/2024.

12. Article 6C paragraph (2) and (3) MEMR Regulation 6/2025.

13. Article 6C paragraph (4) MEMR Regulation 6/2025.

14. Annex to MEMR Regulation 6/2024, section B.

15. Article 6A paragraph (6) and Article 6B paragraph (1) MEMR Regulation 6/2025.

16. Article 9 MEMR Regulation 6/2024.

MEMR Regulation 6/2025 tightens this obligation for affected IUPK holders by requiring monthly progress reports throughout the repair period.¹⁷ Affected IUPK holders are also subject to bimonthly and *ad hoc* inspections by the Ministry.¹⁸ The progress reports must reflect actual progress on restoring smelter functionality and are to be submitted no later than 15 working days after the end of each calendar month.¹⁹

5. Supervision by authorities

MEMR Regulation 6/2024 outlines administrative supervision under normal conditions, where document reviews and field inspections are conducted by the Director General on behalf of the Minister.²⁰ In the event of a force majeure, MEMR Regulation 6/2025 introduces a more direct supervisory role, with the Minister overseeing the repair progress and export activities.²¹ Furthermore, appointed surveyors are mandated to conduct on-site verification to ensure control over the origin, type, quantity and quality of exported materials.²² This framework enforces regulatory oversight and the accountability of export volumes granted under temporary approval.

III. Implications for IUPK holder

MEMR Regulation 6/2025 provides a needed buffer for copper producers whose smelters have been rendered inoperable by circumstances beyond their control. While the regulation does not waive the long-term obligation to refine domestically, it acknowledges that **force majeure events** can harm both business continuity and national interests.

This policy signals the Government's pragmatic approach and enables producers to preserve liquidity and avoid business disruptions during recovery. From a human capital perspective, the regulation also helps **prevent mass layoffs**, as continued exports may sustain production activities and fulfil payroll obligations during the recovery period. Moreover, the state remains positioned to **capture revenue** from export duties and taxes, while ensuring producers work towards restoring domestic refining capacity.

Nevertheless, companies seeking to rely on this relief should be aware that the administrative requirements remain substantial. The application process requires detailed documentation, independent verification and strict monthly reporting, in coordination with MEMR and relevant authorities such as the Ministry of Trade and the Indonesian National Police.

IV. Potential legal gaps

While MEMR Regulation 6/2025 introduces a responsive framework for copper IUPK holders affected by force majeure, several areas within the regulation may need further clarification to strengthen its implementation.

1. Limited scope

The relief mechanism under Articles 2A and 6A is specifically limited to copper IUPK holders. This narrow scope reflects the Government's response to force majeure circumstances that prevented copper smelters from operating despite their completion. While MEMR Regulation 6/2024 covered a wider range of mineral commodities such as iron, lead and zinc, these are not explicitly included in the amendment. Therefore, other IUPK and IUP holders that are not affected by such force majeure events are not accommodated under MEMR Regulation 6/2025.

17. Article 9A paragraph (1) MEMR Regulation 6/2025.

18. Article 10A paragraph (5) MEMR Regulation 6/2025.

19. Article 9A paragraph (2) MEMR Regulation 6/2025.

20. Article 10 paragraph (1) and (2) MEMR Regulation 6/2024.

21. Article 10A paragraph (1) MEMR Regulation 6/2025.

22. Article 10A paragraph (2) letter (b) MEMR Regulation 6/2025.

2. Absence of post-export corrective measures

The regulation outlines conditions for export eligibility, including minimum processing thresholds and export duties. However, it does not appear to address scenarios where exported products are later found to be non-compliant. The lack of guidance on corrective actions, such as product recall and penalties, may reduce accountability in cases of regulatory breach.

3. Unclear consequences for reporting non-compliance

While the regulation mandates monthly reporting and bimonthly inspections, it does not explicitly outline consequences for inaccurate or delayed submissions. In practice, such non-compliance may influence the Ministry's decision to grant or extend export recommendations. However, the absence of a clearly defined enforcement mechanism may lead to uncertainty regarding the implications of reporting violations.

V. Conclusion

MEMR Regulation 6/2025 marks a regulatory adjustment to accommodate operational disruptions due to force majeure in the mineral refining sector. It provides temporary export relief while maintaining the Government's commitment to strengthen the national economy. This balance reflects regulatory flexibility without compromising strategic policy objectives.

The regulation's successful implementation depends on both the relevant authorities and IUPK holders. Stakeholders must act swiftly to meet documentation and reporting requirements, while regulators may consider refining the policy through supplementary guidelines or future amendments. Additionally, a more inclusive regulatory scope and stronger enforcement provisions would enhance the regulation's coherence and ensure that its benefits are equitably distributed across the mineral sector.

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