



Client Alert May 2024

Legal Framework on Indonesia's Active Role in the International Seabed Area (*Kawasan Dasar Laut Internasional – KDLI*)

Presidential Regulation Number 80 of 2023 on Indonesia's Active Role in the International Seabed Area ("PR 80/2023")

Background

In 1985, Indonesia has ratified the United Nations Convention on the Law of the Sea in 1982, through Law Number 17 of 1985 on Ratification of the United Nations (UN) Convention on the Law of the Sea (*Konvensi Perserikatan Bangsa-Bangsa (PBB) tentang Hukum Laut Tahun 1982*) ("**Convention**").

The aforementioned Convention ratified jointly with the Approval for the Implementation of Chapter XI of the 1982 UN Convention on the Law of the Sea through Presidential Decree Number 178 of 1999 on Ratification of the Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea of 10 December 1982 ("**Implementation Approval**").

However, it was on 12 December 2023 PR 80/2023 then issued as an actual implementation of the UN Convention on the Law of the Sea and aims to utilize KDLI, and the natural resources within it through Indonesia's active role in the International Seabed Area (*Kawasan Dasar Laut Internasional* or "**KDLI**") in which the implementation of PR 80/2023 should be determined within 2 (two) years after PR 80/2023 comes into force.

Overview

KDLI implementation activities are carried out in accordance with national interests which aims to foster and strengthen the following aspects:¹

- a. Indonesia's active role in the conservation and utilization of Minerals and Marine Scientific Research;
- b. Indonesia's obligations in managing Minerals at KDLI;
- c. national interests as mineral producer;
- d. Indonesia's interests as a coastal country from activities that have a negative impact on KDLI;
- e. national capacity to carry out Marine Scientific Research at KDLI;
- f. mineral management at KDLI and protection of the marine environment from the impacts of mineral management activities at KDLI; and
- g. effective control by Indonesia as the sponsoring country over Contractors carrying out Mineral management at KDLI.

The Central Government shall actively participate in the International Seabed Authority (“ISA”) and formulates policies, establishes mechanisms, and carries out cooperation in accordance with statutory regulations, Convention provisions, Implementing Agreements, and/or ISA Regulations on a continuous basis to support KDLI implementation as follows:²

- Marine Scientific Research;
- Mineral Management; and
- Utilization of Minerals resulting from Exploitation activities.

Mineral Management at KDLI

Mineral management at KDLI shall be carried out based on the approval of the ISA through Prospecting, Exploration, and Exploitation activities and carried out in accordance with the provisions of the Convention, Implementation Agreement and/or ISA Regulations on a continuous basis.

Prospecting, Exploration, and Exploitation activities shall be carried out by the Minister of Energy and Mineral Resources (“**MoEMR**”) or any legal entity operating in the mining sector that is established based on Indonesian law and is domiciled within the territory of the Unitary State of the Republic of Indonesia (“**Legal Entity**”).³

Prospecting

In the event that the Prospecting activities are carried out by Legal Entity, the Prospecting activities can begin after receiving a notification stating that the submission of notification has been recorded in accordance with ISA Regulation from the MoEMR. The executor of Prospecting activities must submit an annual report regarding the status of implementation of Prospecting activities to the secretary general of the ISA that contain (i) general description regarding the status of implementation of Prospecting activities and the results obtained; and (ii) information related to the compliance and adherence with ISA Regulation at the minimum.⁴

¹ Article 2 of PR 80/2023

² Article 3 of PR 80/2023

³ Definition of “Legal Entity” in Article 1 of PR 80/2023

⁴ Article 19 of PR 80/2023

Exploration

In carrying out the Exploration activities, MoEMR could cooperate with another country that has become a member of the Convention through a cooperation agreement, in which the Exploration activities can be carried out by a jointly appointed Legal Entity or any Legal Entity established and incorporated in a country that has become a member of the Convention outside the territory of the Unitary State of the Republic of Indonesia ("**Foreign Legal Entity**").⁵

The Exploration activities can only be carried out after an exploration work plan in the KDLI sets out in the Exploration contract is approved by the ISA.⁶ Further provisions regarding implementation of Exploration activities shall be regulated in a Ministerial Regulation.⁷

Exploitation

In carrying out the Exploitation activities, MoEMR could cooperate with another country that has become a member of the Convention through a cooperation agreement, in which the Exploitation activities can be carried out by a jointly appointed Legal Entity or Foreign Legal Entity.⁸

The Exploitation activities can only be carried out after an exploitation work plan in the KDLI sets out in the Exploitation contract is approved by the ISA.⁹ Further provisions regarding implementation of Exploitation activities shall be regulated in a Ministerial Regulation.¹⁰

It is noteworthy that the contract proposal for Exploration and/or Exploitation shall be prepared based on the terms and conditions stipulated in the ISA Regulation, submitted by Legal Entity, assigned State Owned Enterprise, or Foreign Legal Entity to ISA through MoEMR and facilitated by Minister of Foreign Affairs with Support Certificate issued by MoEMR as the basis of the submission.¹¹

Obligation of Prospective Contractor and Contractor

A Legal Entity, assigned State Owned Enterprise, or Foreign Legal Entity that has received a Support Certificate that has not yet received a contract with the ISA ("**Prospective Contractor**") in carrying out the Exploration and/or Exploitation activities shall be obligated to:¹²

- a. comply with the provisions of laws and regulations;
- b. fulfill the provisions set out in the Support Certificate, the provisions of the Convention, Implementation Approval, and/or ISA Regulation on an ongoing basis;
- c. fulfill the provisions that have been agreed in the cooperation agreement for a Prospective Contractor that receives a Support Certificate in the context of cooperation; and
- d. fulfill the provisions and follow the evaluation process carried out by ISA to be approved as a Contractor.

The first three obligations of Prospective Contractor shall also be applicable to Legal Entity, assigned State Owned Enterprise, or Foreign Legal Entity that has received a Support Certificate and contract with the ISA ("**Contractor**") among the followings:¹³

⁵ Article 23 of PR 80/2023

⁶ Article 25 of PR 80/2023

⁷ Article 26 of PR 80/2023

⁸ Article 29 of PR 80/2023

⁹ Article 32 of PR 80/2023

¹⁰ Article 33 of PR 80/2023

¹¹ Article 44 paragraph (2) of PR 80/2023

¹² Article 46 of PR 80/2023

¹³ Article 46 paragraph (2) of PR 80/2023

- a. place guarantee funds for the environmental management;
- b. pay financial obligations to the Central Government, including:
 - (i) fees for request of sponsorship;
 - (ii) taxes in accordance with the provisions of laws and regulations in the field of taxation;
 - (iii) import duty and excise in accordance with the provisions of laws and regulations in the field of customs and excise;
 - (iv) annual contributions;
 - (v) production contributions in Exploitation activities determined by MoEMR; and
 - (vi) other contributions regulated in the agreement on Exploitation activities; and
- c. submit a report on implementation of the Prospecting, Exploration and Exploitation activities to MoEMR periodically every 3 (three) months.

Sanction

Prospective Contractor or Contractor that violates the obligations shall be subject to administrative sanctions in the form of:¹⁴

- a. written warning; and/or
- b. revocation of the Support Certificate.

MoEMR in accordance with their authority may revoke a Support Certificate without going through the written warning stage if:¹⁵

- a. a Contractor carries out activities that cause environmental damage;
- b. a Prospective Contractor or Contractor does not fulfill the obligations determined in the Support Certificate as well as the provisions of laws and regulations, provisions of the Convention, Implementation Approval and/or ISA Regulation on an ongoing basis;
- c. a Prospective Contractor or Contractor does not fulfill the results of evaluation and does not have commitment to make improvements in accordance with the performance assessment;
- d. a Prospective Contractor or Contractor commits a criminal offense that has received a court decision having permanent legal force; and/or
- e. a Prospective Contractor or Contractor is declared bankrupt.

¹⁴ Article 69 of PR 80/2023

¹⁵ Article 70 of PR 80/2023

Key Takeaways

1. KDLI implementation activities covered under PR 80/2023 are as follows: (i) Marine Scientific Research; (ii) Mineral Management; and (iii) Utilization of Minerals resulting from Exploitation activities. Upon the implementation, the Central Government is expected to actively participate in the Authority and formulate policies, establish mechanisms, and carry out cooperation in accordance with statutory regulations, Convention provisions, Implementing Agreements, and/or Authority Regulations on a continuous basis;
2. Data and information of Prospecting, Exploration and Exploitation activities shall be confidential and subject to the provisions of the Convention, Implementation Approval, and/or ISA Regulation on an ongoing basis and Legal Entity, assigned State Owned Enterprise, or Foreign Legal Entity involved shall be obligated to submit data and information on the results of the Prospecting, Exploration and Exploitation activities to MoEMR;
3. Guidance and supervision by MoEMR to Prospective Contractor and Contractor will excuse the Central Government to be held liable of claims arises from the negligence and failure of the Prospective Contractor or Contractor in fulfilling its obligations under the provisions of the Convention, Implementation Approval, and/or ISA Regulation on an ongoing basis and Cooperation Agreement.

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