

RECENT DEVELOPMENTS

**Government expects more revenues from mining contract renegotiation**

Jakarta (ANTARA News) - The government is expecting additional revenues from renegotiation of mining contracts through royalties and export taxes, chief economic minister Chairul Tanjung said. "It is estimated that further US\$5-6 billion could be gained through additional revenues in the remaining period by renegotiating contracts," he said here on Friday. He noted that one of the potential sources of additional revenue would be the contract renegotiation agreement between the government and PT Freeport Indonesia, which would be signed shortly.

He said the additional revenue from the mining company would come from a royalty increase that had been agreed from one to 3.75 percent for gold and copper as well as the export tax and export foreign exchange income. "As the new royalty will be paid directly, the revenue will be higher than before. Meanwhile, they will also pay an export tax whose percentage has been set based on the existing government regulation," he explained. Following the successful renegotiation of its contract, PT Freeport Indonesia will immediately be allowed to export certain concentrate materials by paying export tax that has already been adjusted.

"Freeport must honor agreements in the memorandum of understanding, pay the guarantee, and carry out processing before the Ministry of Energy and Mineral Resources issues a recommendation for an export permit to the Ministry of Trade," he said. With the additional revenue and resumption of concentrate exports, Chairul expressed hope that budget conditions will be better, and the country's current account deficit will not become wider at the end of this year. "With mineral exports being done in the form of concentrate, the revenue will be quite significant, and so the balance sheet will be better at the end of the year. In addition, the budget deficit will not be as bad as has been predicted so far," he said.

Of the total 107 mining contracts being renegotiated, 40 have been agreed on, covering seven mineral working contracts and 33 coal mining exploitation agreements (PKB2B). Renegotiation of the remaining 67 working contracts meanwhile is still in progress, as all the points offered by the government have not yet been agreed upon by the mining companies concerned, he said. Six points in the contract renegotiation include the width of the working area; contract extension; royalty payment; domestic refining and smelting; share divestment; and use of local workers, goods, and services. With regard to divestment, an agreement has been reached that if a mineral company is only operating in mining, it is obliged to divest up to minimally 50 percent of its shares, while if it is involved in mining and smelting, its divestment will be set at 40 percent.



## World Trade Organization (“WTO”) Dispute Settlement

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The WTO dispute settlement system is regulated pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes (also known as the Dispute Settlement Understanding or “DSU”) which was developed from the rules, procedures and practices under the General Agreement on Tariffs and Trade (“GATT”). The rules and procedures of the DSU apply to consultations and settlement of disputes between members of the WTO concerning their rights and obligations under the provisions of the *Agreement Establishing the WTO*. The WTO dispute settlement stages are as follows:

### 1. Consultations

The first stage of the WTO dispute settlement system is a mandatory bilateral consultation which is intended to avoid litigation and to seek a mutually agreed solution to a dispute. Any request for consultation by a complaining party shall be submitted in writing and shall give the reasons for the request, including identification of the measures taken that are at issue and an indication of the legal basis for the complaint. In the course of consultations, members of the WTO should themselves attempt to arrange a satisfactory adjustment of the measures in dispute first, before resorting to further action under the DSU.

### 2. Formal Adjudication

If consultations fail to settle a dispute within 60 days after the date the request for consultation was received, the complaining party may request in writing the establishment of a Panel, which will initiate the adjudication stage. The Panel is composed of three to five well-qualified governmental and non-governmental individuals who are selected based on factors including neutrality, background and experience. When a dispute is between a developing-country member and a developed-country member, the Panel shall, if requested by the developing-country member, include at least one panelist from a developing-country member.

The DSU sets the deadlines for key stages of the Panel proceedings and provides that, in order to make the procedures more efficient, the period in which the Panel shall conduct its examination (i.e. from the date that the composition and terms of reference of the Panel have been agreed upon until the date the final report is issued to the parties to the dispute) shall not exceed six months. In cases of urgency,

including those relating to perishable goods, the Panel shall aim to issue its report to the parties of the dispute within three months.

In examining a complaint against a developing country, the Panel is to accord sufficient time for the developing country to prepare and present its argumentation. In addition, where one or more of the parties is a developing country, the Panel's report must explicitly indicate how the Panel took into account relevant provisions of "covered agreements" that allow differential and more-favorable treatment for developing countries and which were raised by the developing country in the course of the dispute settlement procedures.

In order to provide sufficient time for the members to consider Panel reports, the reports are not considered for adoption by the Dispute Settlement Body ("DSB") until twenty days after the date they have been circulated to the members. Members having objections to a Panel report may give written reasons to explain their objections for circulation at least ten days prior to the DSB meeting at which the panel report will be considered. The parties to the dispute have the right to participate fully in the consideration of the Panel report by the DSB and they can file an appeal before the DSB adopts the Panel report.

Although only parties to the dispute may appeal the Panel report, a third party which has notified the DSB of its substantial interest may make written submissions to, and be given an opportunity to be heard by, the Appellate Body. The appellate proceedings are led by three members from the Appellate Body. Although an appeal is limited to issues of law covered in the Panel report and legal interpretations developed by the Panel, in practice the appellants often appeal issues of fact citing alleged failure of the Panel to conduct an objective assessment. The appellate proceedings, which are faster than the Panel proceedings, may not exceed sixty days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report. The DSB must adopt the Appellate Body report within thirty days after it is circulated to the members.

### 3. Implementation and Enforcement

Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all members. Hence, the losing party must notify the DSB of its intentions to implement the decision against it within thirty days of adoption of the Panel or Appellate Body report. The DSB is required to keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any member at any time following their adoption.

Temporary measures are available in the event that the recommendations and rulings are not implemented within a reasonable period of time in the form of compensation and the suspension of concessions or other obligations. However, compensation or the suspension of concessions or other obligations is not a result that is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. If there is an objection to the level of the suspension proposed or claims that the principles and procedures set forth with regard to the suspension of the concessions or other obligations have not been followed, the matter can be referred to arbitration. This arbitration is carried out by the original Panel, if available or by an arbitrator and must be completed within sixty days. The parties are required to accept the arbitrator's decision as final, and the parties concerned may not seek a second arbitration.

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