

COAL LEVY SCHEME AND DMO RELIEF – STILL A WORK IN PROGRESS ¹²³⁴⁵

INTRODUCTION

The long running saga of just how the Government will make the domestic market obligation more bearable for coal producers, by means of a coal sales levy and compensating payments to compliant coal producers, continues to drag on with no obvious end date in sight.

In January 2023, the original proposal for a so-called “Coal BLU Scheme” was abruptly replaced with a new proposal for a so-called “Coal MIP Scheme” involving state-owned banks as collection agents. Finalization of this replacement proposal, however, has now become mired in uncertainty over what to do about the increase in the overall tax burden of coal producers that will result from the proposed introduction of the coal sales levy. In the meantime, Indonesia’s coal producers still have to supply the State Electricity Company and independent power producers with all their required coal needs at a major discount to market price but without the promised relief.

While the continuing high international market price for exported coal ensures that domestic producers remain profitable, there is clearly considerable frustration with the Government’s failure to resolve just how the coal sales levy and resulting compensating payments will work in practice. Unless this issue is quickly resolved, widespread non-compliance with the domestic market obligation may, once again, become a serious problem for the Government.

In this article, the writer will review why the Coal BLU Scheme proved to be a “non-starter”, what we know about the proposed replacement Coal MIP Scheme as well as the latest overall tax burden problem and the current thinking about the calculation, collection and distribution mechanics of the coal levy scheme.

BACKGROUND

In furtherance of the Government’s policy of heavily subsidizing energy prices, the State Electricity Company (Perusahaan Listrik Negara or **PLN**) is obliged to supply electricity to many Indonesian households and businesses at far less than the cost to PLN of acquiring or producing that electricity. This has resulted in PLN long having a very weak financial position which the Government has been unable or unwilling to make good through adequate compensating payments to PLN. PLN’s weak financial position has also made it increasingly difficult for PLN to secure and pay for the coal it needs to generate electricity from the many coal-fired power plants it owns and operates. Growing concerns about PLN’s financial position and its ability to secure/pay for coal supplies

¹ Bill Sullivan, Senior Foreign Counsel with Christian Teo & Partners and Senior Adviser to Stephenson Harwood.

² Bill Sullivan is the author of “*Mining Law & Regulatory Practice in Indonesia – A Primary Reference Source*” (Wiley, New York & Singapore 2013), the first internationally published, comprehensive book on Indonesia’s 2009 Mining Law and its implementing regulations.

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have encouraged the Government to look for “creative” solutions to these problems, which solutions do not result in any increased burden on the State budget.

One of the Government’s solutions to the financial and coal supply problems of PLN has been to require coal producers to prioritize the supply of coal to the domestic market (**DM Obligation**) by imposing (i) annual DM Obligation quotas on coal producers (**DMO Quotas**) and (ii) a ceiling price on the sale of coal to certain domestic users.

The DMO Quota is currently 25% and is expected to increase to 30% once the Draft Law re New Energy and Renewable Energy is enacted.

The ceiling price for coal, with certain specifications, sold to (i) PLN and other so-called “independent power producers” (**IPPs**) is US\$70 per tonne and (ii) other domestic users in the cement and fertilizer industries is US\$90 per tonne (together, **Quality Adjusted US\$70-US\$90 Concessional Coal Price**).

The DMO Quotas are used to satisfy domestic coal needs in respect of (i) the supply of electricity for public and private purposes and (ii) raw material/fuel required by industry (together, **Domestic Coal Needs**).

In late December 2021, the Government announced a ban on all Indonesian coal exports, effective immediately and until the end of January 2022 in the first instance (**January 2022 Temporary Export Ban**).

The January 2022 Temporary Export Ban applied to (i) holders of Coal Contracts of Work (**CCoWs**), coal production operation special mining business licenses (being continuations of former CCoWs) (**Coal Continuation POIUPKs**), coal production operation special mining business licenses (**Coal POIUPKs**) and coal production operation mining business licenses (**Coal POIUPs**) (together, **Relevant Coal Producers**) and (ii) holders of coal transportation and sales permits (**Coal T&S Permits**) (Coal T&S Permit holders together with Relevant Coal Producers, **Coal Sellers**).

The reason for the sudden imposition of the January 2022 Temporary Export Ban was a looming electricity crisis brought on by a serious run-down in the coal stockpiles of PLN and IPPs. According to the Government, the run-down in coal stockpiles was attributable to the failure of Relevant Coal Producers to comply with their DM Obligation.

Relevant Coal Producers view the US\$70-US\$90 Concessional Coal Price as being highly prejudicial to their business/commercial interests given that the market price of coal is well in excess of the Quality Adjusted US\$70-US\$90 Concessional Coal Price.

Although the January 2022 Temporary Export Ban was substantially lifted by the end of January 2022, the Government clearly recognises that the DM Obligation and, more particularly, the Quality Adjusted US\$70-US\$90 Concessional Coal Price needs to be reconsidered to avoid another serious run-down in the coal stockpiles of PLN and IPPs. With the next Presidential election scheduled for April 2024, the Government cannot “afford” the potential, political “cost” of a protracted electricity crisis. At the same time, however, the Government cannot afford the financial cost of funding PLN’s payment of market price for its coal supplies.

In an endeavour to both reduce the opposition of Relevant Coal Producers to the DM Obligation and avoid providing further funding to PLN, the Government is proposing to (i) impose a new levy

on coal sales (**Coal Sales Levy**) and (ii) use the collected Coal Sales Levies to ensure Relevant Coal Producers receive market price for the DMO Quantity Supplied by them, in fulfilment of their DMO Quotas, to PLN, IPPs and certain other domestic coal users (**Relevant Domestic Coal Users**) (**Coal Levy Scheme**). In other words, the Coal Levy Scheme is intended to, finally, provide a comprehensive solution to the long existing problem of how to fulfil Domestic Coal Needs when the main domestic user, being PLN, is unable to pay market price for its coal supplies owing to a weak financial position.

Although the necessary implementing regulation in respect of the Coal Levy Scheme has not yet been issued, the Directorate General of Minerals & Coal (**DGoMC**) has prepared and circulated a PowerPoint Presentation re Explanation of the Proposed Coal DMO Compensation Fund Tariff, dated 14 September 2022 (**DGoMC Presentation 2022**).

DGoMC Presentation 2022 provides much useful information about DGoMC's thinking in terms of the calculation and collection of the Coal Sales Levy.

ANALYSIS AND DISCUSSION

1. Why the Coal BLU Scheme was a Non-Starter

The Government originally proposed to use a Public Service Institution (*Badan Layanan Umum* or **BLU**) to manage and operate the Coal Levy Scheme which was, in fact, widely referred to as the "Coal BLU Scheme".

BLUs are agencies within the Government which are established for the purpose of providing services to the public in the form of supplying goods and/or services without prioritizing profit-seeking and are expected to carry out their activities in accordance with the principles of efficiency and productivity.

BLUs operate as work units of state ministries/institutions/regional governments for the purpose of providing public services that are managed on the basis of the authority delegated to them by the relevant main institution which, in the case of the originally proposed Coal BLU Scheme, is the Ministry of Energy & Mineral Resources (**MoEMR**).

BLUs are not separate from the relevant state ministries/institutions/regional governments which are the main institutions. The heads of the main institutions, being ministers/heads of institutions/governors/regents/mayors, are responsible for the implementation of public services that are delegated to BLUs.

BLUs are allowed to collect levies in return for the goods/services that the BLU provides. The levies, however, are meant to be set taking into consideration the following factors:

- (a) service continuity and development;
- (b) purchasing power;
- (c) principles of justice and appropriateness; and

- (d) healthy competition (Article 9 of Government Regulation No. 23 of 2005, dated 13 June 2005, re Management of Public Service Agency Finances as amended by Government Regulation No. 74 of 2012, dated 28 August 2012 (**GR 23/2005**)).

The Key Performance Indicators of a BLU are determined taking into consideration, among other things, the relevant BLU's role in providing basic services such as the distribution of health donations, education, Micro Small Medium Enterprise (**MSME**) empowerment and/or the eradication of poverty (Article 55(2)b of Minister of Finance (**MoF**) Regulation No. 129/PMK.05/2020 of 2020, dated 18 September 2020, re BLU Management Guidelines, as amended by MoF Regulation No. 202/PMK.05/2022 of 2022, dated 19 December 2022 (**MoF Regulation 129/2020**)).

Some existing BLUs operating in Indonesia are as follows:

- (a) Telecommunications and Information Accessibility Agency (*Badan Aksesibilitas Telekomunikasi dan Informasi* or **BAKTI**), which is responsible to the Minister of Informatics and Telecommunications;
- (b) Revolving Fund Management Institution (*Lembaga Pengelolaan Dana Bergulir* or **LPDB**), which is responsible to the Minister of Cooperatives and Small and Medium Enterprises; and
- (c) Oil Palm Plantation Fund Management Agency (*Badan Pengelola Dana Perkebunan Kelapa Sawit* or **BPDPKS**), which is responsible to the Minister of Environment and Forestry.

The model or template, originally used by DGoMC for the Coal Levy Scheme, is said to have been **PDPKS** which supports the Government's policy of reducing fuel imports and encouraging palm oil production by making industry use of biodiesel (**i.e.**, fossil fuel blended with 30% palm oil) mandatory (**B30 Program**). The objective of the B30 Program is, however, very different to the objective of the Coal Levy Scheme and the role of **BPDPKS** is also different from the intended role of the entity which will manage and operate the Coal Levy Scheme.

In early January 2023 the Government suddenly announced that it was reconsidering the decision to establish and use a BLU for the purpose of collecting and distributing the Coal Sales Levy. The reason for this surprising change in direction was, apparently, a belated realization, on the part of DGoMC, that the requirements of Article 9 of GR 23/2005 and Article 55(2)b of MoF Regulation 129/2020 made a BLU unsuitable as the form of entity to be used to manage the collection and distribution of the Coal Sales Levy. More particularly, the Coal Levy Scheme will **not** involve the provision of basic public services such as the distribution of health donations, education, MSME empowerment and/or the eradication of poverty. The Chairman of the Indonesia Mining & Energy Forum has subsequently suggested that the continued use of a BLU to manage and operate the Coal Levy Scheme would have necessitated allocating, to public service purposes, 15% to 25% of the Coal Sales Levies collected in order to satisfy the requirements applicable to BLUs, something that clearly made the original idea for a Coal BLU Scheme unworkable from the very beginning.

The writer can only speculate as to why it was that DGoMC spent nearly 12 months promoting the use of a BLU to manage and operate the Coal Levy Scheme when any in-

depth review of GR 23/2005 and MoF Regulation 129/2020 would have quickly shown that a BLU was unquestionably **not** the right type of entity to use for this purpose. It certainly does **not** reflect well on the robustness of the internal procedures, followed by DGoMC in developing such an important initiative as the Coal Levy Scheme, that an in-depth review of all the relevant laws and regulations was apparently only undertaken long after the use of a BLU had already been decided upon and, seemingly, very much just as an afterthought.

2. MIP Scheme as a Possible Alternative

In late January 2023, the Government announced that, rather than a BLU, the more appropriate type of entity to manage and operate the Coal Levy Scheme might, in fact, be a Managing Agency Partner (*Mitra Instansi Pengelola* or **MIP**).

MIPs are entities which assist the non-tax state revenue (**PNBP**) management agency (which, in the case of the coal industry, is MoEMR) in carrying out part of the PNBP management activities (Article 1(17) of Law No 9 of 2018, dated 23 August 2018, re PNBP (**PNBP Law**)).

An MIP may be appointed in accordance with (i) a Law, (ii) a Government Regulation, (iii) a Presidential Regulation and/or (iv) an assignment from the head of the relevant PNBP management agency in carrying out PNBP management (Article 8(3) of Minister of Finance (**MoF**) Regulation No. 155/PMK.02/2021 of 2021, dated 8 November 2021, re Procedures for Management of Non-Tax State Revenue (**MoF Regulation 155/2021**)).

For the use of an MIP to be workable, in the context of the Coal Levy Scheme, the Coal Sales Levy would have to be designated as a form of PNBP. This is because MIPs are only meant to be used in connection with PNBP management activities.

Pursuant to Article 4(3) of the PNBP Law, different types of PNBP may be regulated pursuant to (i) a Law, (ii) a Government Regulation and/or (iii) a MoF Regulation. Currently, the different types and tariffs of PNBP, as administered by MoEMR, are regulated pursuant to (i) Government Regulation No. 26 of 2022, dated 15 August 2022, re Types and Rates of Non-Tax State Revenue Applicable to Ministry of Energy and Mineral Resolutions (**GR 26/2022**) and (ii) MoF Regulation No. 17/PMK.02/2022 of 2022, dated 1 March 2022, re Types and Rates of Non-Tax State Revenue as Urgent Needs in the Form of Fines and Compensation Fund Contributions in order to Fulfil Domestic Coal Requirements at MoEMR (**MoF Regulation 17/2022**). However, the Coal Sales Levy is **not** included, as a form of PNBP, in either GR 26/2022 or MoF Regulation 17/2022.

Notwithstanding the previous paragraph, however, it is possible for Government to now impose PNBP on Relevant Coal Producers. This is because it is recognized that the Government may (although it has not previously done so) impose PNBP on holders of IUPs/IUPKs/Community Mining Licenses (*Ijin Pertambangan Rakyat* or IPRs)/Rock Mining Licenses (*Surat Izin Pertambangan Batuan* or *SIPBs*) (Article 128 of Law No. 4 of 2009, dated 12 January 2009, re Minerals and Coal Mining, as amended lastly by Government Regulation in lieu of Law No. 2 of 2020, dated 30 December 2022, re Job Creation (**Mining Law**). Therefore, in reliance upon the Mining Law, the Government could designate the Coal Sales Levy as a form of PNBP and then use a MIP to manage and operate the Coal Levy Scheme.

On 30 January 2023, MoEMR indicated there was a possibility that a State-Owned Enterprise (SOE) might be appointed as the MIP for the Coal Levy Scheme. Subsequently, on 20 March 2023, MoEMR stated that the collection and distribution of Coal Sales Levies would be carried out by three SOE banks, acting jointly as the MIP, being PT Bank Mandiri (Persero) Tbk, PT Bank Negara Indonesia (Persero) Tbk and PT Bank Rakyat Indonesia (Persero) Tbk.

3. Overall Tax Burden

Having found the original idea for a Coal BLU Scheme to be unworkable and then having had to struggle with the numerous technical issues associated with designating the Coal Sales Levy as a form of PNPB so that the Coal BLU Scheme could be recast as a Coal MIP Scheme, the Government has now been confronted with yet another problem. – growing industry opposition to the seemingly ever increasing, overall tax burden of Relevant Coal Producers.

Since 2022, domestic coal sales only have been subject to value added tax (VAT) of 11%. Prior to 2022, all coal sales (both domestic and export) were VAT exempt. In addition, Relevant Coal Producers have to pay a production royalty of up to 13.5% on the first domestic sale or export of their coal production (Production Royalty).

Unsurprisingly perhaps, at least some Relevant Coal Producers have apparently objected to paying VAT and the Production Royalty, as well as the Coal Sales Levy, on coal sales. The existence of the VAT problem has been widely reported in the commercial press including (i) Investor Daily on 20 March 2023, (ii) Dkatadata.co.id on 24 March 2023 and (iii) Dkatadata.co.id again on 3 April 2023. The Production Royalty problem may be newly emerging and has recently been brought to the writer's attention by coal industry professionals.

The VAT problem and the Production Royalty problem arise because VAT and the Production Royalty are levied on 100% of the selling price of coal but, following the introduction of the Coal Levy Scheme, Relevant Coal Producers will only get to keep a net amount, being the coal selling price less the applicable Coal Sales Levy.

At this time, the most likely solution to the VAT problem seems to be to, once again, exempt at least certain domestic coal sales from VAT. This outcome is supposedly now being co-ordinated by MoEMR and MoF. However, a quick resolution of the VAT problem may not be possible owing to the complexity of VAT exemptions, something that was recently highlighted by DPR Commission VII member Ramson Siagan.

It is presently unclear whether or not any VAT exemption for domestic coal sales will only apply to those Relevant Coal Producers which are subject to the DM Obligation or to all Relevant Coal Producers as well as to Coal Traders. Logically, however, it would seem that the latter should be the case as the intention is that all Coal Sellers (i.e., both Relevant Coal Producers and Coal Traders) will be subject to the Coal Sales Levy and regardless of whether or not they are subject to the DM Obligation.

It is also unclear what, if anything, the Government will be prepared to do about the Production Royalty. Having already been in existence for so long (albeit not at the current rates), Relevant Coal Producers may simply have to accept that they will continue to pay the

Production Royalty, as well as the Coal Sales Levy, even if there is some relief in sight for VAT on domestic coal sales.

4. Coal Levy Scheme Mechanics

- 4.1 **Preliminary Remarks:** While the precise legal structure of the Coal Levy Scheme remains uncertain, the calculation, collection and distribution mechanics of the Coal Levy Scheme itself have become somewhat clearer as a result of DGoMC Presentation 2022.
- 4.2 **Calculation of Coal Sales Levy:** Pursuant to DGoMC Presentation 2022, the applicable Coal Sales Levy (referred to in that presentation as the “*Compensation Fund Tariff*”) is to be calculated as follows:

Total Compensation Fund Required	=	Amount of Distribution Required (Compensating Payment)
(Compensation Fund Tariff × Coal Sales Volume)		(Price Difference × Adjustment Difference × DMO Quantity Supplied (tons)) + Operational Cost + VAT 11%

Compensation Fund Tariff	
Coal Sales Levy/Compensation Fund = (Rate Ratio × Price Difference (per ton)) × Coal Sales Volume (tons)	
▪	Rate Ratio = $\frac{(1.11 \times \text{Domestic Coal Needs})(\text{tons})}{\text{Coal Sales Projection (tons)}} \times \text{Adjustment Difference}$
▪	Price Difference = Coal Benchmark Price (<i>Harga Pokok Batubara</i> or HPB) at actual Coal Reference Price (<i>Harga Batubara Acuan</i> or HBA) – HPB at HBA Special Price
▪	Adjustment Difference = the ratio of the difference between the actual selling price and the HPB on the actual HBA (it is understood that, in practice, the actual selling price is lower than the actual HPB and HBA)

Each of the components used in calculating the Coal Sales Levy/Compensation Fund Tariff, as per the above formula, is further explained in DGoMC Presentation 2022 as follows:

- (a) **Rate Ratio** shall be issued at the beginning of each month and evaluated not less often than every 3 months;
- (b) **Domestic Coal Needs** are derived from the coal demand reports from relevant domestic industries;
- (c) **Coal Sales Projection** is derived from the historical data of the previous sale period (lowest/average value);

- (d) **Price and Sales Volume Difference** is based on the actual data of each Coal Seller's sales transactions; and
- (e) pursuant to Slide 4 of DGoMC Presentation 2022, HPB at HBA Special Price is not more than the US\$70-US\$90 Concessional Coal Price.

The writer's current understanding of each of those components, used in calculating the Coal Sales Levy/Compensation Fund Tariff as per the above formula and that are not further explained in the DGoMC Presentation 2022, is as follows:

- (a) **Operational Cost** is probably to be interpreted as the costs and expenses incurred by Coal Sellers in producing and/or selling DMO coal. This likely interpretation, however, will only become certain once the relevant regulation for the Coal Levy Scheme is issued;
- (b) **HPB/Coal Benchmark Price** is determined at the sales point on a free on-board basis; and
- (c) **HBA/Coal Reference Price** is specified by MoEMR each month in a MoEMR decree. There has recently been a major change as to how the HBA is calculated. Previously, the HBA was calculated by averaging the coal prices published by the Indonesia Coal Index (ICI), Newcastle Export Index (NEX), Globalcoal Newcastle Index (GCNC) and Platt's 5900 for the previous month. However, following the issuance of MoEMR Decree No. 41.K/MB.01/MEM.B of 2023, the HBA will now be calculated using real Indonesian coal sales transaction e-PNBP data for the previous 2 months. This new approach, to calculating HBA, is considered fairer to Coal Sellers given Relevant Coal Producers largely produce low calorific value coal only whereas in other countries (most notably, Australia), high calorific value coal production is much more common.

4.3 **Collection of Coal Sales Levy:** DGoMC has considered 2 options for collecting the Coal Sales Levy; namely, (i) export coal sales only (**Option 1**) and (ii) all coal sales (**i.e., both** domestic coal sales **and** export coal sales) (**Option 2**).

Based on DGoMC Presentation 2022, it is the writer's present understanding that, for reasons of (i) fairness, (ii) relative ease of collection and (iii) the perceived desirability of keeping the Coal Sales Levy rate as low as possible, DGoMC has decided to proceed with Option 2.

It was reported by CNBC Indonesia, on 9 August 2022, that the aggregate amount of the Coal Sales Levy, to be collected and subsequently managed as part of the Coal Levy Scheme, may eventually be as much as Rp350 trillion or US\$26.31 billion.

4.4 **Relevant Domestic Coal Users:** The Coal Levy Scheme will probably cover coal supplied to all Relevant Domestic Coal Users which are presently entitled to the benefit of the Quality Adjusted US\$70-US\$90 Concessional Coal Price, being (i) PLN, (ii) IPPs and (iii) domestic users in the cement and fertilizer industries. As, however, the Quality Adjusted US\$70-US\$90 Concessional Coal Price does not apply to domestic users in the metal mineral processing and refining industry, it must be assumed that the Coal Levy Scheme will not cover coal supplied to domestic users in the metal mineral processing and refining industry.

- 4.5 **Compensating Payment:** Relevant Coal Producers, producing coal with quality specifications required by or suitable for Relevant Domestic Users, will receive a compensating payment, from the Coal MIP, for the DMO Quantity Supplied by them (**Compensating Payment**).

The Compensating Payment will be calculated as follows:

$$\text{Price Difference (per ton)} \times \text{Adjustment Difference} \times \text{DMO Quantity Supplied (tons)}$$

- 4.6 **Cash Flow and Invoicing Mechanics:** Relevant Coal Producers will receive, in total and from 2 separate sources, the HPB price, as adjusted for the actual quality specifications of the relevant coal (**Quality Adjusted HPB Price**), for the DMO Quantity Supplied by them.

Relevant Coal Producers will issue 2 invoices for each DMO Quota coal sale to Relevant Domestic Coal Users as follows:

- (a) **First Invoice:** The first invoice will be issued to the Relevant Domestic Coal User, as the actual buyer of the coal, in an amount (**First Invoice Amount**) equal to:

$$\text{DMO Quantity Supplied} \times \text{Quality Adjusted US\$70-US\$90 Concessional Coal Price} + \text{VAT of 11\%}$$

- (b) **Second Invoice:** The second invoice will be issued to the Coal MIP, as the Compensating Payment agency, in an amount (**Second Invoice Amount**) equal to:

$$\text{Price Difference (per ton)} \times \text{Adjustment Difference} \times \text{DMO Quantity Supplied (tons)}$$

Relevant Coal Producers will, in turn, receive two payments for each coal sale to Relevant Domestic Coal Users as follows:

- (a) **First Payment:** Payment of the First Invoice Amount will be received by the Relevant Coal Producer from the Relevant Domestic Coal User as the actual buyer of the coal; and
- (b) **Second Payment:** Payment of the Second Invoice Amount will be received by the Relevant Coal Producer from the Coal MIP as the Compensating Payment agency.

- 4.7 **Price Difference:** For the purpose of calculating each of the Coal Sales Levy/Compensation Fund Tariff and the Compensating Payment/Second Invoice Amount, the **Price Difference** is:

$$\text{HPB at actual HBA per ton (i.e., Quality Adjusted HPB Price)} - \text{HPB at Special Price per ton (i.e., Quality Adjusted US\$70-US\$90 Concessional Coal Price)}$$

- 4.8 **Effective Date:** The Government's original intention seems to have been that the Coal Levy Scheme would operate with retrospective effect from 1 January 2022 and on the assumption that the Coal Levy Scheme regulation would be issued in the first half of 2022. Self-evidently, this did not happen and the longer the delay in issuing the Coal Levy Scheme

regulation continues, the less likely it is that the Coal Levy Scheme will operate with retrospective effect from 1 January 2022 or even from 1 January 2023. This is because the longer the delay in issuing the Coal Levy Scheme regulation the (i) greater the cost involved in settling accrued Compensating Payment entitlements due to Relevant Coal Producers and (ii) greater the administrative complexity involved in collecting accrued Coal Sales Levies from Coal Sellers.

It is also not clear that, if and when the Coal Levy Scheme regulation is finally issued, the preconditions for giving the Coal Levy Scheme regulation retrospective effect can be satisfied. More particularly, Indonesian regulations must not be made effective earlier than the time of promulgation (**i.e.**, should not be retroactive) “*unless there is a strong reason to do so taking into account certain factors*” as follows:

- (a) new provisions relating to criminal matters (whether the type, weight, nature or classification of a criminal matter) are not allowed to be enforced retroactively;
- (b) details, regarding the effect of the said retroactive provisions on existing legal actions, legal relations and certain legal consequences, must be set out in a transitional provision; and
- (c) the entry into force of laws and regulations must not be earlier than when the draft regulation first became known to the public (**e.g.**, when the draft statutory regulation is listed in the National Legislative Program (Program Legislasi Nasional or Prolegnas), Regional Legislative Program (Program Legislasi Daerah or Prolegda) or as part of the formulation of other laws and regulations) (Paragraphs 155 and 156 of Appendix II to Law No. 12 of 2011, dated 12 August 2011, re Establishment of Legal Regulations, as amended by Law No. 13 of 2022, dated 16 June 2022).

5. Implications for Coal Sellers

The implications of the Coal Levy Scheme, when finalized, for Relevant Coal Producers and Coal Traders are likely to be as follows:

- (a) Relevant Coal Producers, producing coal with quality specifications required by or suitable for Relevant Domestic Users, will:
 - (i) **probably** continue to pay the Production Royalty at current rates;
 - (ii) continue to be subject to the DMO Quota;
 - (iii) pay the Coal Sales Levy on all their coal sales, both domestic and export;
 - (iv) **possibly** no longer pay VAT on domestic coal sales; and
 - (v) receive the Quality Adjusted HPB Price, in 2 separate payments and from 2 separate parties, for the DMO Quantity supplied by them to Relevant Domestic Coal Users;
- (b) Relevant Coal Producers, **not** producing coal with quality specifications required by or suitable for Relevant Domestic Users, will:

- (i) **probably** continue to pay the Production Royalty at current rates;
 - (ii) **not** be subject to the DMO Quota;
 - (iii) pay the Coal Sales Levy on all their coal sales, both domestic and export; and
 - (iv) **possibly** no longer pay VAT on domestic coal sales; and
- (c) Coal Traders, will:
- (i) **not** be subject to the DMO Quota;
 - (ii) pay the Coal Sales Levy on all their coal sales, both domestic and export; and
 - (iii) **possibly** no longer pay VAT on domestic coal sales.

SUMMARY & CONCLUSIONS

After more than 15 months of work, the precise legal structure of the proposed Coal Levy Scheme still remains a work in progress.

The Government's belated realization and acknowledgement, in January 2023, that the original proposal for the Coal Levy Scheme to be managed and operated by a Public Service Institution or BLU was unworkable, due to long existing legal constraints on the permitted activities of BLUs, constituted an embarrassing setback for the Government and represented the waste of much valuable time and resources.

No regulation has been issued, as yet, setting out the administrative and legal details of the Coal Levy Scheme. However, the Coal Levy Scheme will, most probably, now (i) be managed and operated by 3 SOE banks jointly acting as the Managing Agency Partner or MIP and (ii) require the Coal Sales Levy to be designated as a form of PNBP.

Assuming the Government wants to avoid a repeat of the January 2022 debacle, with declining coal stocks at PLN and other IPPs forcing the Government to impose another coal export ban, it needs to "get its skates on" and quickly resolve the remaining technical issues in respect of the Coal Levy Scheme. Time is definitely **not** on the Government's side in this regard as Relevant Coal Producers are, undoubtedly, growing daily ever more frustrated with the continuing delay in finalizing and implementing the Coal Levy Scheme.

This article was written by Bill Sullivan, Senior Foreign Counsel with Christian Teo & Partners and Senior Adviser to Stephenson Harwood. Christian Teo & Partners is a Jakarta based, Indonesian law firm and a leader in Indonesian energy, infrastructure and mining law and regulatory practice. Christian Teo & Partners operates in close association with international law firm Stephenson Harwood which has eight offices across Asia, Europe, and the Middle East: Dubai, Hong Kong, London, Paris, Piraeus, Seoul, Shanghai, and Singapore.

Get in touch



Bill Sullivan

T: +62 21 5020 2789

M: +62 815 8506 0978

E: bsullivan@cteolaw.com



Christian Teo

T: +62 21 5020 2789

M: +62 818 124 747

E: cteo@cteolaw.com



Claudius Novabianto

T: +62 21 5020 2789

M: +62 818 0858 9235

E: cnbianto@cteolaw.com