

METAL MINERAL EXPORT BAN – MORE TWISTS AND TURNS ¹²³⁴⁵

INTRODUCTION

The long-running saga of Indonesia’s proposed ban on the export of all less than fully refined metal minerals, as a means of promoting smelter construction, has taken yet another turn with the Government allowing some producers of certain metal minerals still more time to complete the construction of their smelters.

Producers of metal concentrates, in the form of Copper, Iron, Lead and Zinc, as well as producers of Anode Slime stand to benefit from the Government’s rethinking of the start date for the proposed export ban, albeit at some potential cost to them in terms of penalties and additional financial obligations.

Bauxite Ore producers, however, are being treated very differently. The Government has, apparently, lost all patience with Bauxite Ore producers as a result of the lack of any substantial progress in Bauxite smelter construction in many instances.

In this article, the writer will review the latest “twists and turns” in respect of the metal mineral export ban before considering why Bauxite Ore producers are being treated differently.

BACKGROUND

The history of Indonesia’s proposed ban, on the export of all less than fully refined metal minerals, has a convoluted history which reminds the author of nothing so much as a “steep mountain road” with seemingly endless “twists and turns”.

First announced in 2012, with a 11 January 2014 deadline for smelter construction, imposition of the export ban on many but not all metal minerals were subsequently delayed, at the very last moment, until 11 January 2017.

In January 2017, the Government announced that it would allow (i) the continuation of exports of certain metal mineral Concentrates (Concentrates being intermediate and only partially refined metal mineral products) beyond the then 11 January 2017 deadline for full domestic processing and refining of all metal minerals (**2017 Concentrate Export Continuation**) and (ii) the resumption of exports of substantially unprocessed/unrefined Nickel Ore and Bauxite Ore which had been banned since 11 January 2014 (**2017 Nickel Ore & Bauxite Ore Export**

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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Resumption) (together, **2017 Export Ban Relaxation**).

The 2017 Export Ban Relaxation allowed parties, producing Concentrate forms of Copper and certain other metals, to continue to export their Concentrate products, in quantities approved by the Ministry of Energy & Mineral Resources (**ESDM**), for a maximum of five years until 11 January 2022, so long as they met various conditions including 90% ongoing progress in fulfilling their existing commitments to domestic smelter construction (**2017 Concentrate Export Continuation Conditions**).

The 2017 Export Ban Relaxation also allowed parties, producing Nickel Ore, to resume the export of unprocessed Nickel Ore, with a Nickel content of less than 1.7% and in ESDM approved quantities, for a maximum of five years until 11 January 2022, so long as they met various conditions including 90% ongoing progress in fulfilling their existing commitments to domestic smelter construction.

Finally, the 2017 Export Ban Relaxation allowed parties, producing Bauxite Ore, to resume the export of washed Bauxite Ore, with an Aluminum Oxide content of at least 42% and in ESDM approved quantities, for a maximum of five years until 11 January 2022, so long as they met various conditions including 90% ongoing progress in fulfilling their existing commitments to domestic smelter construction (**2017 Bauxite Ore Export Conditions**).

While the 2017 Concentrate Export Continuation was widely expected, the 2017 Nickel Ore & Bauxite Ore Export Resumption took many people by surprise.

The Government subsequently brought forward the ban on the export of Nickel Ore, with a Nickel content of less than 1.7%, from 11 January 2022 to 31 December 2019 and thereby effectively banned the export of all Nickel Ore as of 31 December 2019 (**2019 Nickel Ore Export Ban**). The Government, however, left in place the 2017 Concentrate Export Continuation and the 2017 Nickel Ore & Bauxite Ore Export Resumption in respect of Bauxite Ore only.

The 2017 Concentrate Export Continuation was subsequently extended again from 11 January 2022 until 10 June 2023 by virtue of Article 47(1) and (2) of Minister of Energy & Mineral Resources (**MoEMR**) Regulation No. 17 of 2020 re Third Amendment to MoEMR Regulation No. 25 of 2018 re Mineral & Coal Mining Business. In addition, the Government did not take any steps to enforce the proposed January 2022 ban on Bauxite Ore exports. This is despite the fact that neither the 2017 Concentrate Export Continuation Conditions nor the 2017 Bauxite Ore Export Conditions were being fully complied with, at least in respect of the supposedly most important condition; namely, smelter construction progress.

The failure, in many if not most instances, to achieve anything like 90% ongoing progress in fulfilling their commitment to domestic smelter construction progress has been attributed by Concentrate producers and Bauxite Ore producers to a variety of factors including (i) in the case of Concentrate producers, unavoidable delays due to the Covid-19 Pandemic and associated labour movement restrictions and (ii) in the case of Bauxite Ore producers, lack of funding support from financial institutions owing to the questionable economics of their smelter projects.

In June 2022, both the President and the Minister of Investment announced that the Government intended to ban the further export of Bauxite Ore before the end of 2022. This, however, never happened for unclear reasons.

The Government has now announced that yet another extension of the 2017 Concentrate Export Continuation will be allowed in the case of a small number of mineral producers (**2023 Concentrate Export Continuation Extension**) and subject to compliance with various conditions. However, **no** further extension of the 2017 Export Ban Relaxation, in the case of Bauxite Ore, will be allowed. The export ban on Bauxite Ore finally came into effect on 10 June 2023.

As part of the 2023 Concentrate Export Continuation Extension, MoEMR has issued (i) MoEMR Regulation No. 7 of 2023, dated 9 June 2023, re Continuation of Development of Domestic Metal Mineral Processing & Refining Facilities (**MoEMR Regulation 7/2023**) and (ii) Decree No. 89 of 2023, dated 16 May 2023, re Guidelines for Imposing Administrative Fines for Delays in the Construction of Domestic Metal Mineral Refining Facilities (**MoEMR Decree 89/2023**).

ANALYSIS AND DISCUSSION

1. Overview of MoEMR Regulation 7/2023 and MoEMR Decree 89/2023

MoEMR Regulation 7/2023 provides the legal basis for the 2023 Concentrate Export Continuation Extension while MoEMR Decree 89/2023 provides much important technical detail about how the 2023 Concentrate Export Continuation Extension will be implemented.

2. MoEMR Regulation 7/2023 in Detail

2.1 **Relevant Mineral Products & Byproducts:** The 2023 Concentrate Export Continuation Extension covers certain mineral products and byproducts only, being (i) Concentrate forms of Copper, Iron, Lead and Zinc and (ii) Anode Slime which is a byproduct of Copper processing and refining (together, **Relevant Mineral Products & Byproducts**) (Articles 2 and 4 of MoEMR Regulation 7/2023).

2.2 **Relevant Producers and Export Sales Exception:** Holders of production operation mining business licenses (**POIUPs**) and production operation special mining business licenses (**POIUPKs**), covering the Relevant Mineral Products & Byproducts (**Metal Mineral POIUP/POIUPK Holders**):

- (a) which (i) have completed **not less than 50%** of the construction of their smelter facilities **as of 31 January 2023** and (ii) are **committed** to completing the remaining construction of their smelter facilities (**Relevant Producers**);
- (b) may carry out export sales of their Relevant Mineral Products & Byproducts;
- (c) using the Tariff Post/Harmonized System; and

- (d) **until 31 May 2024**; but subject to
- (e) payment of the applicable export duty/tax; and
- (f) compliance with the provisions of other relevant laws and regulations (**Export Sales Exception**) (Article 3 of MoEMR Regulation 7/2023).

Why is the qualifying minimum construction completion percentage set at not less than 50% as of 31 January 2023 rather than, say, not less than 60% or not less than 75% as of 31 January 2023? This is undoubtedly because, according to the 11 June 2023 report of on-line news portal detikfinance, as of 31 January 2023 the smelter construction completion percentages of two of Indonesia's largest Copper Concentrate producers, PT Freeport Indonesia and PT Aman Mineral Nusa Tenggara, were only slightly above 50% or 54.52% and 51.63% respectively.

Although not made clear by MoEMR Regulation 7/2023, it is almost certainly a matter for MoEMR's discretion whether or not any particular Metal Mineral POIUP/POIUPK Holder is approved as a Relevant Producer able to take advantage of the Export Sales Exception. This is because there is **no** definition or explanation in MoEMR Regulation 7/2023 of how "commitment" to completing smelter construction is to be determined.

- 2.3 **Requirement for Export Recommendation and Export Approval:** Having been approved by MoEMR to take advantage of the Export Sales Exception, Relevant Producers must still obtain (i) an export recommendation from the Director General of Minerals & Coal (**DGoMC**) (**Export Recommendation**) and (ii) an export approval from the Director General of Foreign Trade (**Export Approval**) before they can actually carry out the export of their Relevant Mineral Products & Byproducts.

Detailed guidelines for obtaining an Export Recommendation are set out in an attachment to MoEMR Regulation 7/2023.

The granting of an Export Recommendation is dependent upon, among other things, having an updated and independently verified smelter facility development plan with a target completion date of **not later than 31 May 2024** (Articles 5 and 6 of MoEMR Regulation 7/2023).

It is interesting to note that the critical date of not later than 31 May 2024 is in respect of completion of **physical construction** of the relevant smelter facility only, **not** completion of commissioning of the relevant smelter facility or commencement of commercial operation of the relevant smelter facility.

- 2.4 **Permitted Concentrate Export Quantities:** Export Recommendations and Export Approvals will only be granted to Relevant Producers in respect of particular quantities of their Relevant Mineral Products & Byproducts that are determined having regard to (i) the need to ensure the retention of sufficient metal mineral reserves to meet the input needs of smelter facilities once construction of the same is completed, (ii) the ESDM approved work plans & budgets of Relevant Producers and (iii) the input capacities of

their smelter facilities once construction of the same is completed (Article 7 of MoEMR Regulation 7/2023).

3. **MoEMR Decree 89/2023 in Detail**

- 3.1 **Base 90% Construction Progress Requirement for Export:** The “base position” continues to be that Relevant Producers may only carry out export sales of their Relevant Mineral Products & Byproducts while so long as the **actual** physical progress in the construction of their smelter facilities is, **in each six month period**, not less than 90% of the **planned** physical progress in the construction of their smelter facilities for **that six month period** (**90% On-Going Physical Construction Progress Requirement**).

The **actual** vs **planned** physical progress of smelter facility construction, in each six month period, is to be determined by an “independent verifier”, with the results of the independent verification included in a report (**Independent Construction Progress Verification Reporting Requirement**) (First Stipulation of MoEMR Decree 89/2023).

Both the 90% On-Going Physical Construction Progress Requirement and the Independent Construction Progress Verification Reporting Requirement have, in one form or another, been part of the applicable regulatory regime since the announcement of the 2017 Export Ban Relaxation.

- 3.2 **Administrative Penalty:** Relevant Producers will be required to pay an administrative penalty, for each six-month period that they fail to fulfill the 90% On-Going Physical Construction Progress Requirement, in the amount of 20% of the cumulative value of their export sales during that six-month period (**Administrative Penalty**) (Second Stipulation of MoEMR Decree 89/2023).
- 3.3 **Covid-19 Delay:** The Administrative Penalty is intended to take into account the extent or otherwise to which the failure to fulfill the 90% On-Going Physical Construction Progress Requirement is the result of delays in smelter construction due to the impact of the Covid-19 Pandemic, as substantiated by a report prepared by an “independent verifier” (**Covid-19 Delay Verification Report**) (Third Stipulation of MoEMR Decree 89/2023).

The Covid-19 Delay Verification Report must be submitted to DGoMC not later than 60 days after the effective date of MoEMR Decree 89/2023 which is 16 May 2023 (**Effective Date**); that is, by 16 July 2023 (Seventh and Thirteenth Stipulations of MoEMR Decree 89/2023).

The Government recognizes that the delay impact of the Covid-19 Pandemic on the smelter construction projects of individual Relevant Producers may have been in respect of any one or more of various aspects of smelter project construction, being (i) engineering, (ii) procurement, (iii) construction and (iv) commissioning (Fourth Stipulation of MoEMR Decree 89/2023).

For the purposes of the Administrative Penalty, the Government only recognizes the delay impact of the Covid-19 Pandemic, on smelter project construction, as having continued until 31 December 2022 (Sixth Stipulation of MoEMR Decree 89/2023).

3.4 **Calculation of Administrative Penalty:** The Administrative Penalty or “fine” is to be calculated according to the following formula:

Administrative Penalty = $\{(90\% - A - B) / 90\% \} \times 20\% \times C$ where:

- A. is the percentage of cumulative **actual** physical construction progress during the relevant evaluation period;
- B. is the total percentage of construction activities **affected/delayed by the Covid-19 Pandemic**; and
- C. is the cumulative value of export metal mineral sales during the relevant construction period (Fifth Stipulation of MoEMR Decree 89/2023).

Administrative Penalties:

- (a) constitute non-tax state revenue; and
- (b) must be paid by Relevant Producers (i) not later than one month after the date of issuance of an Administrative Penalty payment order by DGoMC and (ii) by way of direct deposit to the State Treasury.

Evidence of payment of the Administrative Penalty must be provided to DGoMC not later than three working days after a Relevant Producer deposits its Administrative Penalty into the State Treasury (Eighth Stipulation of MoEMR Decree 89/2023).

There are a couple of interesting aspects of the Administrative Penalty.

First, the Administrative Penalty is **not** (i) a penalty that Relevant Producers must pay for (i) their **previous** failure to fulfill the 90% On-Going Physical Construction Progress Requirement or (ii) the “price” Relevant Producers must pay in order to obtain the benefit of the Export Sales Exception. Instead, it is merely a **potential** penalty that Relevant Producers may be liable to pay for **future** failures to fulfill the 90% On-Going Physical Construction Progress Requirement.

Second, the liability/obligation to pay the Administrative Penalty only arises **after the issuance of an Administrative Penalty payment order by DGoMC**. In other words, if (for whatever reason) no Administrative Penalty payment order is ever issued by DGoMC to a particular Relevant Producer, which fails to fulfill the 90% On-Going Physical Construction Progress Requirement, then there is **no** liability/obligation to pay the Administrative Penalty. It would perhaps not be surprising if DGoMC was to prove to be somewhat reluctant to issue an Administrative Penalty payment order to any Relevant Producer which fails to fulfill the 90% On-Going Physical Construction Progress Requirement but has strong political connections.

3.5 **Seriousness Guarantee:** Metal Mineral POIUP/POIUPK Holders, which have not previously provided a guarantee of seriousness in progressing the construction of their smelter facility (Seriousness Guarantee), are required to now provide a Seriousness Guarantee:

- (a) in an amount equal to 5% of the aggregate value of metal mineral export sales made by the relevant Metal Mineral POIUP/POIUPK Holder during the period 16 October 2019 to 11 January 2022;
- (b) by way of deposit into an escrow account at a State-owned bank opened in the joint names of DGoMC and the relevant Metal Mineral POIUP/POIUPK Holder; and
- (c) not later than 90 days after the Effective Date; that is, by 16 August 2023.

In the event that, as of 10 June 2024, actual physical progress in the construction of a particular smelter, as verified by an independent verifier, is:

- (a) not less than 90% of the entire smelter development plan (i.e., the relevant smelter is at least 90% complete), the amount of the Seriousness Guarantee is to be disbursed/released to the relevant Metal Mineral POIUP/POIUPK Holder; or
- (b) less than 90% of the entire smelter development plan (i.e., the relevant smelter is **not** at least 90% complete), the amount of the Seriousness Guarantee is to be deposited into the State Treasury as non-tax state revenue; that is, the amount of the Seriousness Guarantee is forfeited (Tenth and Thirteenth Stipulations of MoEMR Decree 89/2023).

The Tenth Stipulation is interesting for various reasons.

First, on a literal reading of the Tenth Stipulation, the requirement to provide a Seriousness Guarantee is not confined to only those Relevant Producers which receive the benefit of the Export Sales Exception but, rather, to all Metal Mineral POIUP/POIUPK Holders which have not completed the construction of their smelter facilities and regardless of whether or not they have been approved as Relevant Producers which can take advantage of the Export Sales Exception.

Second, there is **no** penalty specified for the failure of a Metal Mineral POIUP/POIUPK Holder to provide a Seriousness Guarantee by 16 August 2023 if it has not already done so.

Third, Seriousness Guarantees have actually been required since 2019 pursuant to MoEMR Decree No. 154 of 2019 re Guidelines for Imposing Administrative Fines for Delay in Construction of Refining Facilities (**MoEMR Decree 154/2019**) as subsequently amended by MoEMR Decree 210 of 2019 re Amendments to MoEMR Decree 154/2019 (**MoEMR Decree 210/2019**). The fact that it is necessary to make special provision, in MoEMR Decree 89/2023, for Metal Mineral POIUP/POIUPK Holders, which have not previously provided Seriousness Guarantees when they were

legally required to do so, seems to necessarily imply that, for whatever reason, ESDM has chosen **not** to strictly enforce the Seriousness Guarantee requirement in the past.

Fourth, as far as the writer has been able to ascertain, there has not been even a single case of forfeiture of an “old” Seriousness Guarantee put in place pursuant to the requirements of MoEMR Decree 154/2019 as amended by MoEMR Decree 210/2019. If ESDM previously lacked the political will to enforce the “old” Seriousness Guarantee requirements of MoEMR Decree 154/2019, as amended by MoEMR Decree 210/2019, is it reasonable to think that ESDM will suddenly now acquire the political will to enforce the “new” Seriousness Guarantee requirements of MoEMR Decree 89/2023?

Fifth, the only difference between the “new” Seriousness Guarantee requirement and the “old” Seriousness Guarantee requirement seems to be that, pursuant to the “old” Seriousness Guarantee requirement, not less 75% progress of the entire smelter development plan had to be achieved by 11 January 2022 in order to avoid forfeiture of the Seriousness Guarantee whereas, pursuant to the “new” Seriousness Guarantee requirement, the minimum required percentage to avoid forfeiture has been increased to 90% by 10 June 2024. Accordingly, MoEMR Decree 89/2023 is merely “tinkering” with the wording of the Seriousness Guarantee requirement rather than imposing a new requirement. At the end of the day, however, if ESDM lacks the political will to strictly enforce either the requirement for a Seriousness Guarantee or the mandatory forfeiture of the Seriousness Guarantee in the event of insufficient smelter construction progress, the actual wording of the Seriousness Guarantee requirement is substantially irrelevant.

4. **Details of 2023 Concentrate Export Continuation Extension as Implemented**

It was reported in the business press, as early as the last week of May 2023 and only some ten days after the issuance of MoEMR Decree 89/2023, that the Metal Mineral POIUP/POIUPK Holders, which have been approved as Relevant Producers and would, therefore, be allowed to continue exporting Relevant Mineral Products & Byproducts in reliance upon the Export Sales Exception, are as follows:

Metal Mineral POIUP/POIUPK Holders	Relevant Mineral Products & Byproducts
PT Freeport Indonesia	Copper and Anode Slime
PT Amman Mineral Nusantara	Copper and Anode Slime
PT Sebuku Iron Lateritic Ores	Iron
PT Kobar Lamandau Mineral	Zinc
PT Kapuas Prima Citra	Lead

Self-evidently, ten days is “lightning fast” in terms of satisfying the administrative requirements for approval by MoEMR of the above five Metal Mineral POIUP/POIUPK Holders as Relevant Producers. It is also interesting to note that MoEMR Regulation 7/2023, which actually provides the legal basis for approval of Relevant Producers and availability of the Export Sales Exception, was only issued on 9 June 2023 which is **after** the five Relevant Producers had already been approved or, at least, decided upon by MoEMR.

5. Assessment of 2023 Concentrate Export Continuation Extension

Indonesia exported some US\$3.05 billion of Copper products in 2021 and about US\$2.57 billion of Copper products during the first eleven months of 2022. Most of this Copper product export value will have been in the form of Copper Concentrate as Indonesia currently has only very modest Copper smelting capacity and Copper Ore exports are banned. At the same time, Indonesia's largest Copper producer, PT Freeport Indonesia, is majority owned by the national holding company for State-owned mining companies. As such, PT Freeport Indonesia is an important source of dividend income for the Government. Finally, PT Freeport Indonesia has long been one of the largest sources of tax revenue and non-tax state revenue for the Government. In early September 2022, President Jokowi Widodo was reported as having said that PT Freeport Indonesia's "contribution to state revenue" was US\$7.5 billion in 2021 while, on 31 May 2023, Tempo Magazine reported that the Investment Minister had indicated total "state revenue" from PT Freeport revenue, including taxes, dividends and non-tax state revenue, was US\$3.32 billion in 2023 and was expected to increase to US\$3.76 billion in 2024. Although these various figures are somewhat difficult to reconcile, the "bottom line" is clear enough; that is, PT Freeport Indonesia has been and is expected to continue to be a major revenue contributor, in one form or another, to the Government. Likewise, PT Amman Mineral Nusantara has also generated significant export earnings for Indonesia and significant tax revenue and non-tax state revenue for the Government. These hugely important economic and revenue benefits would quickly disappear if PT Freeport Indonesia and PT Amman Mineral Nusantara were no longer allowed to engage in Copper Concentrate export business activities.

Given the above, it was almost inevitable that the Government would continue to allow the export of Copper Concentrate after June 2023 and even though the major Copper Concentrate producers had not completed the construction of their smelters by then. The only uncertainty in this regard was whether or not the Government could find some even modestly plausible justification for doing so. The Covid-19 Pandemic and the associated increased operating challenges for mining companies provide the needed plausible justification for extending the June 2023 deadline that the Government has unquestionably been looking for. Accordingly, no informed Indonesian mining industry observer should be in the least bit surprised by the 2023 Concentrate Export Continuation Extension which can be seen as a pragmatic solution to the otherwise difficult problem of how Indonesia and the Government would cope with the associated loss of export earnings and tax/non-tax state revenue if Copper Concentrate export sales were to be stopped.

The real challenge for the Government is likely to have been finding ways to "dress-up" the 2023 Concentrate Export Continuation Extension so as to make it look like the Government was imposing a "high price" on Relevant Producers which received the benefit of the Export Sales Exception and thereby avoid any serious criticism that it was not doing enough to enforce and otherwise not taking sufficiently seriously the downstream processing and refining obligation of Metal Mineral POIUP/POIUPK Holders (**DP&R Obligation**). In the run-up to the April 2024 Presidential Election, the potential for any such criticism would have been something that members of the ruling Government coalition might have found very "uncomfortable" indeed and, therefore,

wanted to avoid at all costs. The introduction of the Administrative Penalty as well as the new (but not really “new”) Seriousness Guarantee are all part of the “window dressing”. As has been made clear in Parts 3.3 to 3.5 above, however, neither the Administrative Penalty nor the new Seriousness Guarantee are as onerous as might otherwise appear to be the case from a superficial reading of MoEMR Decree 89/2023.

It is less apparent why PT Sebuku Iron Lateritic Ores, PT Kobar Lamandau Mineral and PT Kapuas Prima Citra have also been favoured with quick approval as Relevant Producers able to take advantage of the Export Sales Exception.

6. **Why Time has Run Out for Bauxite Ore Producers**

It is interesting to consider why Bauxite Ore producers are being denied the same treatment (**i.e.**, the availability of the Export Sales Exception) as the approved Relevant Producers of Relevant Mineral Products & Byproducts. Presumably, the Covid-19 Pandemic has given rise to just as many operational problems for Bauxite Ore producers as it has for approved Relevant Producers of Relevant Mineral Products & Byproducts.

The Government’s explanation for the differential treatment of Bauxite Ore producers and Relevant Producers is that Bauxite Ore producers have not taken their DP&R Obligation seriously as evidenced by the lack of any meaning construction progress in the case of many approved Bauxite Ore smelter projects compared to the much greater smelter construction progress of Relevant Producers. According to ESDM, of the twelve Bauxite Ore smelters that have been approved for construction, only four are actually operating while the other eight are still “works in progress”. Of the eight Bauxite Ore smelters that are still “works in progress”, seven are just “open fields”. In this regard, MoEMR was recently quoted as having, somewhat sarcastically, compared the sites of many Bauxite Ore smelter projects to “football fields”; that is, wholly undeveloped, open areas of land.

It is hard not to agree with the Government’s all too evident conclusion that most Bauxite Ore producers have no intention of building smelters regardless of how long they are given to do so and unless the construction financing burden is borne by someone else. Like producers of Copper Concentrate and other Relevant Mineral Products & Byproducts, Bauxite Ore Producers have been given numerous extensions, both official and unofficial, of the deadline to build smelters but have failed to make any smelter construction progress at all notwithstanding these extensions. ESDM should, however, have been fully aware of this situation a long time ago if it was serious about regularly checking on the construction progress of every approved smelter project.

A more cynical explanation, for the differential treatment of Bauxite Ore producers and the approved Relevant Producers of Relevant Mineral Products & Byproducts, is that the continuation of Bauxite Ore export sales is just not as important to Indonesia and the Government, from a trade balance and tax/non-tax state revenue perspective, as is the continuation of export sales of Copper Concentrate and other Relevant Mineral Products & Byproducts. In this regard, it is notable that the value of Bauxite Ore exports was only US\$628.17 million in 2021 and US\$502.5 million in the first nine months of 2022 or less than 20% of the value of Copper Concentrate exports during the same periods. In

other words, the direct and indirect costs of banning Bauxite Ore export sales are much less than the direct and indirect costs of banning export sales of Copper Concentrate and other Relevant Mineral Products & Byproducts. The Government may also see following through and banning Bauxite Ore export sales as of 10 June 2023 as a way to, at relatively lower cost, “signal” to a sceptical public (in the run-up to the April 2024 Presidential Election) the seriousness of its continued commitment to strictly enforcing the DP&R Obligation while, at the same time, avoiding the much higher cost option of banning export sales of Copper Concentrate and other Relevant Mineral Products & Byproducts as well as export sales of Bauxite Ore.

SUMMARY & CONCLUSIONS

The undeniable and serious operational problems that the Covid-19 Pandemic created for the local mining industry provide a convenient, if far from comprehensive explanation, of why the 10 June 2023 deadline for completion of refinery/smelter construction was not achieved in the case of many Metal Mineral POIUP/POIUPK Holders.

The 2023 Concentrate Export Continuation Extension, however, was always likely to happen regardless of why the 10 June 2023 deadline for completion of smelter construction was not achieved. The “cost”, in terms of foregone export sales of Copper Concentrate and other Relevant Mineral Products & Byproducts, as well as the associated foregone tax and non-tax state revenue from Relevant Producers, was simply too great for the Government to do otherwise.

The complicating factor for the Government, in granting the 2023 Concentrate Export Continuation Extension, has been the forthcoming April 2024 Presidential Election.

The “end of the road”, in terms of export sales, for non-compliant Bauxite Ore producers was probably long overdue even if non-compliant Bauxite Ore producers may well be just “collateral damage” as the Government seeks to find the “least bad solution” to a difficult problem in the run-up to the April 2024 Presidential Election.

With the new May 2024 deadline for completion of smelter construction by the five approved Relevant Producers “conveniently” being just after the end of the forthcoming April 2024 Presidential Election, it would not be surprising if that deadline was to be put back, yet again, in due course. What about the many months it will surely take to commission the smelters once construction is completed?

More “twists and turns” in that “steep mountain road”, which is the “route” of full domestic processing and refining of all metal minerals, are entirely possible.

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