CHRISTIAN TEO & PARTNERS
(in association with Stephenson Harwood)

UNCERTAIN COMMODITY EXPORT MONOPOLY – DEFECTIVE POLICY MAKING [1][2][3][4][5]

INTRODUCTION

In late May, the President announced the introduction of a controversial new system for controlling the export of certain natural resources products but, only a couple of weeks later, it seems that serious Government concerns about the viability of the new system are already emerging.

As originally announced, the new system would effectively give Indonesia's sovereign wealth fund, Danantara, a monopoly on the export of certain natural resources products, initially limited to coal, ferro-alloys and palm oil. However, the intention was clearly that the new system would eventually be expanded to cover additional so-called "Strategic Natural Resources Commodities", designated as such by the Government from time to time.

The stated objective of the new system is said to be the maximization of State earnings and tax revenues through strengthened supervision of the export of natural resources products, which strengthened supervision is directed at eradicating alleged widespread under-invoicing and transfer pricing as well as ensuring the long-term retention of foreign exchange earnings in Indonesia.

Much of the detail of just how the new system will work in practice is not yet clear. Nevertheless, based on what is currently known, it would be hard to overstate what a potentially fundamental change the recently announced export monopoly would represent, for production companies operating in Indonesia's mining and other natural resources sectors as well as for foreign buyers and traders of Indonesia's mineral and other natural resources products, **if** it was to be fully implemented in its current form.

Unfortunately, the doubts now being expressed by "*certain unnamed Government officials*" and Danantara itself as to whether or not the new system will proceed, as originally planned, only serve to (i) highlight the defective policy making underlying the proposed new system and (ii) create further uncertainty for industry stakeholders as well as for potential investors and financiers. This could not have occurred at a worse time for Indonesia given the "crisis of confidence", largely caused by concerns about poor policy making, the country is already facing with financial markets and foreign investors.

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5 An earlier version of this article appeared in the June – July 2026 issue of Coal Metal Asia Magazine.

In this article, the writer will review what is presently known about the new system as well as some of the potential implications of the new system, **<u>if</u>** it proceeds in its current form, for a variety of participants in the export market for Indonesia's natural resources products. Finally, the writer, will consider how the new system should be viewed from the perspective of the Government's apparent long-term strategy for the local mining and other natural resources sectors.

<u>BACKGROUND</u>

During a plenary session of Indonesia's House of Representatives (**DPR**) on 20 May 2026, the President announced that a new state-owned enterprise, PT Danantara Sumberdaya Indonesia (**DSI**), had been established to centralize and control the future export of Indonesia's coal, metal minerals and other natural resources commodities/products, starting with coal, ferro-alloys and palm oil (**New Commodity Export Control Mechanism**).

The President indicated his growing concern about the effectiveness of existing measures to prevent the apparently widespread use of under-invoicing, transfer pricing and other nefarious practices by **<u>certain</u>** producers and exporters of natural resources products to avoid paying, in full, the tax obligations in respect of their export activities. At a time when the recent oil price shocks, occasioned by hostilities in the Middle East, are causing increased strains on the Government's fiscal position, the need to maximize tax revenue, from the mining and other natural resources sectors, is clearly becoming of much increased importance to the Government as it seeks to avoid major cutbacks in its populist and hugely expensive social welfare projects.

The President made express reference, in his DPR address, to a 27 April 2025 report by the NEXT Indonesia Centre entitled "*Indonesia's Missing Billions: Coal Export Gaps Expose Deeper Oversight Risks*". The Next Indonesia Centre report summarizes the results of a study, based on the analysis of the United Nations Commodity Trade Statistics Database (**UN Comtrade Data**), highlighting apparent gaps in Indonesia's coal export data. These gaps supposedly show that Indonesia's actual **<u>coal</u>** exports, over the period 2015 to 2024, were some Rp345 trillion (approximately US$20 billion) higher than were recorded in Indonesia. Analysing the available UN Comtrade Data for the longer period of 2000 – 2024, the Next Indonesia Centre report concludes that the under-reporting of Indonesia's **<u>coal</u>** exports was in the order of Rp680.7 trillion (approximately US$39.5 billion) over that longer period.

Although specifically mentioning the NEXT Indonesia Centre report, the President chose to focus on the alleged under-reporting etc. of exports of **<u>all</u>** of Indonesia's natural resources products (**<u>not</u>** just coal) which he said could, if properly controlled, potentially generate additional revenue for the Government of around **<u>US$150 billion annually</u>**. The source of and supporting evidence for this extraordinarily high number were not made clear by the President.

The President justified the introduction of the New Commodity Export Control Mechanism on the basis of Article 33(3) of the Indonesian Constitution (**IC Article 33(3)**). As reported in the popular press, the President supposedly said that Indonesia's "*founding fathers*" had suffered under "*imperialistic dominance*" in the past and went on to remark that:

> "*We have to remember history to prevent such hegemony from returning. Let's be brave in facing the problems… On economic governance of our country, it has been formulated by our founding fathers [**<u>i.e.</u>**, IC Article 33(3)]. They were not naïve*".

Subsequent to the President's DPR address, the Coordinating Minister for the Economy (**CMoE**), the Minister of Investment & Down-streaming and other Government officials, as well as representatives from Danantara, spoke at a press conference and provided a media briefing which included an outline of how the New Commodity Export Control Mechanism is intended to work. The proposed staggered "roll out" of the New Commodity Export Control Mechanism was also explained in general terms (**20 May Press Conference & Media Briefing**).

Immediately following the 20 May Press Conference & Media Briefing, the Minister of Energy & Mineral Resources (**MoEMR**) made clear that oil and gas products would **not** be subject (at least for the time being) to the New Commodity Export Control Mechanism. Also, within a couple of days of announcing the New Commodity Export Control Mechanism, the Government granted exemptions for exporters/exports of nickel pig iron **(NPI)** and refined palm oil products.

According to various mining and other industry bodies, there was **no** Government consultation with industry or the private sector before the announcement of the New Commodity Export Control Mechanism.

Government Regulation No. 24 of 2026 re Governance of Exports of Strategic Natural Resources Commodities Through State Owned Enterprises has been issued with legal effect from 1 June 2026 (**GR 24/2026**). Three Minister of Trade (**MoT**) implementing regulations have subsequently been issued, in reliance upon GR 24/2026, being (i) MoT Regulation No. 15 of 2026 re Commodity Export Policies in respect of **Coal** as a Strategic Natural Resources Commodity, (ii) MoT Regulation No. 16 of 2026 re Commodity Export Policies in respect of **Palm Oil** as a Strategic Natural Resources Commodity and (iii) MoT Regulation No. 17 of 2026 re Commodity Export Policies in respect of **Ferro-Alloys** as a Strategic Natural Resources Commodity (together, **Certain MoT Implementing Regulations**).

On 11 June, 2026, The Straits Times newspaper reported "*unnamed Government officials*" as saying that the originally intended scope of the New Commodity Export Control Mechanism will be significantly scaled back to become an export price monitoring and verification system only (**ST Report**). Similar statements, from unnamed DSI executives, have been subsequently reported in the Indonesian press.

COMMENTARY

1. What We Know and What We Don't Know So Far about New Commodity Export Control Mechanism as Originally Announced

1.1 **What We Know:** The 20 May Press Conference & Media Briefing, GR 24/2026, the Certain MoT Implementing Regulations and, possibly, the ST Report are the best and, indeed, the only real guide we have at the moment as to how the New Commodity Export Control Mechanism was **originally** meant to work and how it may now work in practice.

I. 20 May Press Conference & Media Briefing

The 20 May Press Conference & Media Briefing makes much clearer, than is apparent from a reading of GR 24/2025 and the Certain MoT Implementing Regulations, how it was **originally** envisaged the New Commodity Export Control Mechanism would work, both before and after 31 December 2026. More particularly, the 20 May Press Conference &

Media Briefing indicates that the New Commodity Export Control Mechanism would be the subject of a staggered or three-stage "rollout" that may be summarized as follows:

(a) **First Stage – 1 June to 30 September 2026:** During this first stage:

(i) producers/traders would (X) continue to deal directly with offshore buyers and be responsible for arranging/carrying out the sale and export of designated Strategic Natural Resources Commodities while (Y) filing/submitting copies of export documentation with DSI; and

(ii) DSI would monitor/review/verify sale/export prices of designated Strategic Natural Resources Commodities, as specified in submitted export documentation, in order to satisfy itself that the specified sales/export prices reflect "*reasonable values in accordance with global price indices*".

(b) **Second Stage – 1 October to 31 December 2026:** During this second stage:

(i) DSI would undertake a "trial-run" of and evaluation of the New Commodity Export Control Mechanism; but

(ii) the sale and export of all or at least some designated Strategic Natural Resources Commodities would continue to be handled by producers/traders directly with offshore buyers.

(c) **Third Stage – 1 January 2027 Onwards:** During this third stage:

(i) DSI would (X) buy and take ownership of all designated Strategic Natural Resources Commodities from producers (which have **<u>not</u>** been granted exemptions), (Y) sell/export all designated Strategic Natural Resources Commodities directly to foreign buyers and (Z) take a margin/charge a "spread" as between the buying price and the selling price of the designated Strategic Natural Resources Commodities bought/sold by it, meaning this was intended to be a profit making exercise for DSI; and

(ii) producers/traders (which have **<u>not</u>** been granted exemptions) would no longer deal directly with foreign buyers in respect of the sale and export of designated Strategic Natural Resources Commodities.

The Government has indicated that it will continue to honour existing long-term offtake/supply contracts for designated Strategic Natural Resources Commodities, as well as associated letters of credit, provided that the prices used in these contracts are broadly consistent with applicable market prices for the relevant Strategic Natural Resources Commodities.

II. GR 24/2026

GR 24/2026 is not particularly enlightening and is clearly intended to be supplemented by one or more ministerial implementing regulations. However, the salient points of GR 24/2026 may be summarized as follows:

(a) **designated** Strategic Natural Resources Commodities are subject to "*export governance*";

(b) "*export governance*" may take the form of (i) export control (**including implementation of verification or tracing methodologies/requirements**), (ii) export transportation and insurance arrangements and/or (iii) "*other mechanisms*";

(c) verification and tracing methodologies used as part of "*export governance*", both before and after 31 December 2026, will rely on coordination of the (i) Customs Excise Information System & Automation (**CEISA**), (ii) Sistem Indonesia National Single Window (**SINSW**), (iii) Trade Information System (**INATRADE**), (iv) Integrated Real-Time Foreign Exchange Monitoring System (**SimoDIS**) and/or (v) Minerba Online Monitoring System;

(d) **initially**, the designated Strategic Natural Resources Commodities comprise (i) coal, (ii) palm oil and (iii) ferro-alloys only;

(e) notwithstanding (d) above, **additional** mineral and other natural resources products **may** be **subsequently** designated as "*Strategic Natural Resources Commodities*" by the Government, having regard to (i) the national interest, (ii) economic stability, (iii) domestic needs and/or (iv) management of national strategic natural resources;

(f) designation of additional Strategic Natural Resources Commodities is to be carried out by a coordination meeting chaired by CMoE or the Coordinating Minister of Food (**CMoF**);

(g) starting not later than 31 December 2026/1 January 2027 and subject to (h) below, designated Strategic Natural Resources Commodities may only be exported by a State-owned enterprise (**BUMN**) which is granted a special assignment by the Government to carry out the export of designated Strategic Natural Resources Commodities (**Export BUMN**);

(h) notwithstanding (g) above, exemptions to "*export governance*" may be granted to particular business actors, producing Strategic Natural Resources Commodities, which business actors have a "*contract or agreement with the Government which at least provides for (i) investment, (ii) divestment and (iii) processing and/or refining within Indonesia*" (**i.e.**, local value added activity/down-steam processing & refining) (**EG Exemptions**); and

(i) EG Exemptions may be granted by CMoE or CMoF.

DSI has been designated as the Export BUMN referred to in GR 24/2026.

Provision is made for the possibility of either moving forward or extending the 31 December 2026 start date, for full control of export activities by the Export BUMN, having regard to the outcome of the 4th quarter 2026 evaluation of DSI's readiness to assume its new role. It may well be that the emerging suggestion DSI might, in fact, just confine itself to export price monitoring and verification activities is premised on the idea that the originally envisaged first stage (**i.e.**, from 1 June to 30 September 2026), of the "roll out" of the New Commodity Export Control Mechanism, can be continued indefinitely if that proves to be more realistic in practice. That said, indefinite continuation of DSI export price monitoring and verification only is definitely **not** consistent with GR 24/2026.

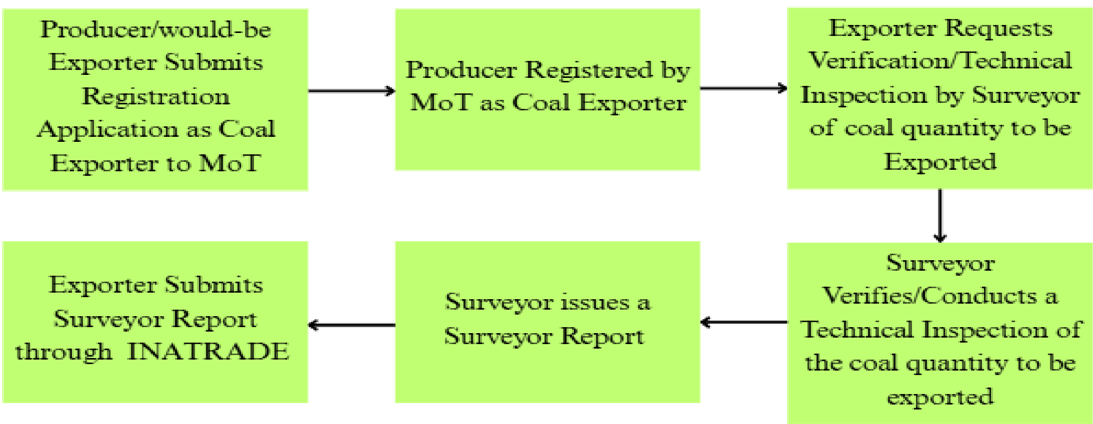
The announcement that NPI and refined palm oil products will not be subject to "export governance" presumably reflects the fact that producers of NPI and refined palm oil products have been granted EG Exemptions.

It is readily apparent from GR 24/2026 that coal, palm oil and ferro-alloys are **not** the only mineral and other natural resources products that the Government originally intended would **eventually** be designated as Strategic Natural Resources Commodities. Instead, coal, palm oil and ferro-alloys were seen by the Government as merely being the **first** mineral and other natural resources products to be designated as Strategic Natural Resources Commodities.

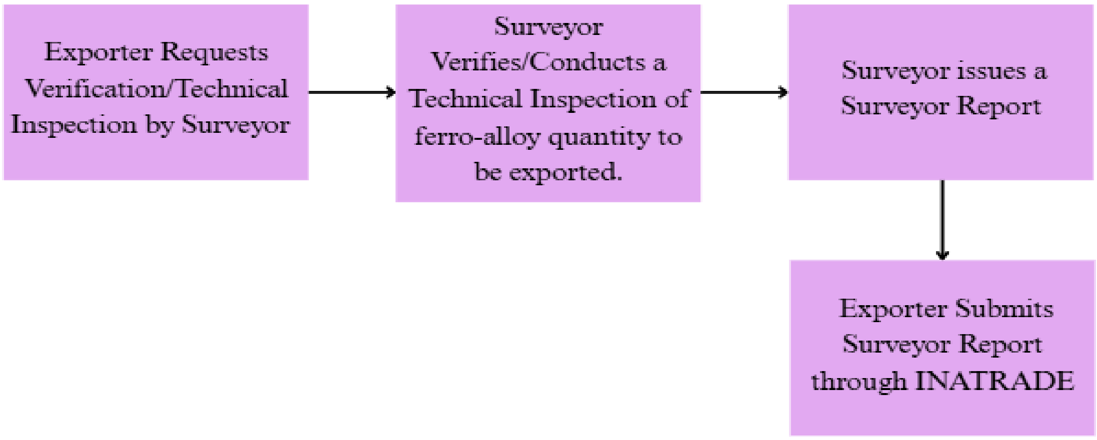
III. Certain MoT Implementing Regulations

The Certain MoT Implementing Regulations (a) specify in attachments the particular coal, ferro-alloy and palm oil products that are currently subject to "export governance" (**i.e.**, the relevant producers have not been granted EG Exemptions) and (b) set out the procedures applicable to export of the relevant coal, ferro-alloy and palm oil products. These procedures (d) differ depending on whether coal, ferro-alloy or palm oil products are being exported and (e) were originally only intended to apply (i) during the period 1 June to 31 December while producers are still allowed to export coal, ferro-alloys or palm oil products, subject to supervision/verification by DSI and (ii) before DSI (as the Export BUMN) takes over the export of all designated Strategic Natural Resources Commodities not later than 31 December 2026, **assuming no material changes to the New Commodity Export Control Mechanism** as announced on 20 May 2026. The different procedural sets may be summarized in flowchart form as follows:

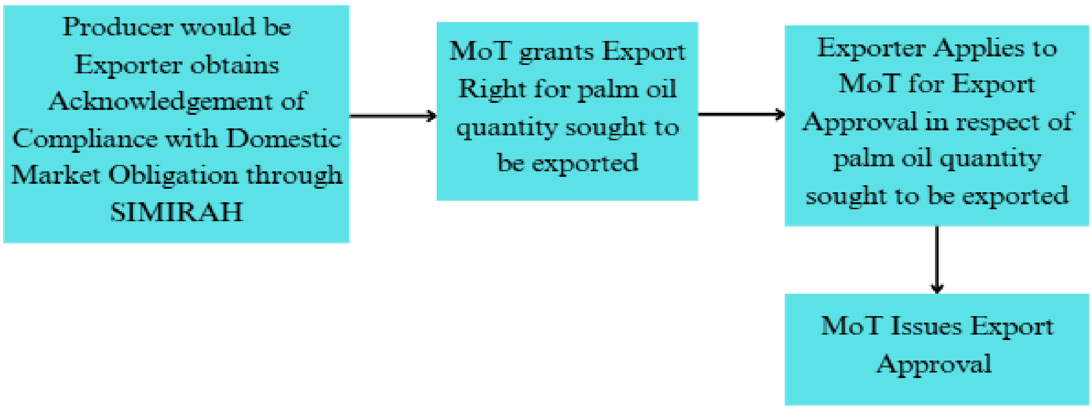
(a) **Coal**



(b) **Ferro-Alloys**



(c) **Palm Oil**



1.2 **What We Don't Know:** Notwithstanding Part 1.1 above, many "unknowns" remain about how the New Commodity Export Control Mechanism will work both before and after 31 December 2026, **<u>even if it proceeds in its current form and ignoring the ST Report</u>**. Some only of these "unknowns" include:

(a) In the case of existing long-term offtake/supply agreements, for designated Strategic Natural Resources Commodities which have been guaranteed protection, will producers/traders nevertheless still be required to assign/novate/transfer these contracts to DSI on or before 31 December 2026? If "yes", then (subject to the wording of each individual contract) this will most probably require the consent of the foreign buyer/off-taker. What happens, if individual foreign buyers/off-takers refuse to consent to the proposed assignment/novation/transfer? In this regard, it must be expected that at least some foreign buyers/off-takers will be singularly unenthusiastic about the prospect of replacing known and well-established sellers/suppliers/traders (with whom they have dealt for many years) with the wholly unknown and wholly untested DSI. In these circumstances and assuming the availability of alternative supplies of relevant Strategic Natural Resources Commodities from other countries, some foreign buyers/off-takers may well prefer to **<u>not</u>** consent to the proposed assignment/novation/transfer but, instead, source their future needs for designated Strategic Natural Resources Commodities from other countries. Something similar happened in 2025 when the Government sought to enforce a new minimum selling price regime for coal, which new regime reflected a wholly unrealistic Government assessment of Indonesia's ability/right to determine/influence/set the applicable price for coal in world markets. The potential for litigation, involving difficult legal issues such as (i) breach of contract and entitlement to damages, (ii) legal impossibility, (iii) force majeure and (iv) repudiation, should be obvious.

(b) What price and in what currency will DSI pay producers for their designated Strategic Natural Resources Commodities? Presumably, given it is intended that DSI will take a margin/earn a profit on its trades, DSI will **not** be willing to pay coal producers, ferro-alloy producers and, in due course, producers of other metal mineral Strategic Natural Resources Commodities the published benchmark price (**HPB/HPM**) for their coal and metal minerals. This is because HPB/HPM is the most that DSI can realistically expect foreign buyers to pay it for coal, ferro-alloys and, in due course, other designated metal mineral Strategic Natural Resources Commodities. The necessary implication would seem to be that producers will receive **less** for their designated Strategic Natural Resources Commodities, if and when they are obliged to sell them to DSI, than they do currently when they sell/export directly to foreign buyers. Further, as sales of designated Strategic Natural Resources Commodities by producers to DSI will be purely domestic transactions, DSI will likely only pay producers Rp denominated prices for their designated Strategic Natural Resources Commodities (as currently mandated by Bank Indonesia), **not** US$ denominated prices for their designated Strategic Natural Resources Commodities as producers currently charge foreign buyers for their Strategic Natural Resources Commodities. Although the final resolution of these pricing and currency issues remains uncertain, the outlook does **not** appear promising in terms of the likely impact on the revenue/net profit of producers of designated Strategic Natural Resources Commodities while the potential loss of foreign exchange earnings and consequent increased currency risk that producers will face, at a time when the Rp is depreciating, will surely be concerning to producers as well as to their financiers and investors.

(c) How and where will DSI store/stockpile the potentially huge volumes of designated Strategic Natural Resources Commodities it buys from producers and before the sale/export by DSI of these huge volumes of designated Strategic Natural Resources Commodities? Alternatively, will producers be made responsible for storing/stockpiling designated Strategic Natural Resources Commodities even after they have been sold to DSI and before DSI has found export buyers for these designated Strategic Natural Resources Commodities? The associated logistical issues would seem to be potentially very challenging.

(d) Is it feasible for DSI to build, from "scratch" and within 6 months, a viable trading operation capable of effectively and efficiently handling the huge volumes of designated Strategic Natural Resources Commodities that DSI will be responsible for selling and exporting come 1 January 2027? Given Indonesia is one of the world's largest producers of low calorific value or "steaming" coal, a trading operation just covering that part of Indonesia's coal production not designated for domestic use would, nevertheless, be a huge operation by any standard.

(e) What continuing role will there be for traders of designated Strategic Natural Resources Commodities after 31 December 2026? More particularly, large international commodity trading houses have traditionally sort to secure long term offtake contracts with Indonesian producers of coal, ferro-alloys and a variety of other metal minerals. However, once producers are obliged to sell their production of designated Strategic Natural Resources Commodities to DSI, will there be any opportunity to enter into new long term offtake agreements with Indonesian producers? At best, it would seem that, after 31 December 2026, large international commodity trading houses may well be confined to trying to secure new long term offtake contracts with DSI instead. As an effective monopolist, DSI's resulting market power is likely to result in the commercial terms, of any new long term offtake contracts, being significantly less favourable to international commodity trading houses than is the case with existing offtake contracts with individual producers, which will enjoy "grandfather" protection.

Unless and until the above "unknowns" are resolved, it is difficult to make a fully informed assessment of the New Commodity Export Control Mechanism and its implications for the various participants in the export market for Indonesia's designed Strategic Natural Resources Commodities. It may well be that it is the associated challenge of resolving these "unknowns" that has caused "*unnamed Government officials*", as quoted by the ST Report, to say that the originally intended scope of the New Commodity Export Control Mechanism would be scaled back to become an export price monitoring and verification system only.

2. <u>**Putting the New Commodity Export Control Mechanism in Context**</u>

2.1 **Past Experience with Indonesian Commodity Trading Monopolies:** Indonesia has a history of experimenting with natural resources commodity trading monopolies as a hoped for "quick fix" solution to a variety of actual or perceived problems. However, unfortunately, this historical experience does not inspire much confidence that the New Commodity Export Control Mechanism, <u>**if it proceeds in its current form**</u>, will deliver a better long-term result for Indonesia than did earlier natural resources commodity trading monopolies.

Particular reference should be made to the infamous clove monopoly of the 1990s, known as the "Clove Buffer & Marketing Board" (**Clove B&M Board**). Clove farmers were obliged to sell their clove production to village cooperatives which, in turn, were obliged to sell the cloves to the Clove B&M Board. Clove farmers were paid a very low price for their clove production while the Clove B&M Board then sold, or at least tried to sell, the cloves to kretek cigarette manufacturing companies (cloves being a key raw material input for the production of kretek cigarettes) at a very high price. Established for the avowed purpose of stabilizing prices for cloves and improving clove farmer welfare, the Clove B&M Board proved to be an unmitigated financial disaster. Facing bankruptcy as a result of poor governance (one of President Soeharto's sons was the head of the Clove B&M Board), badly managed clove stockpiles, excessive debt and rumoured widespread corruption, the Clove B&M Board was eventually dissolved without realizing any of its objectives. The Clove B&M Board (like monopolies everywhere and not just in Indonesia) may be seen to be a very good example of the inherent truth of the famous maxim of British historian and politician Lord Acton that:

> "*Power tends to corrupt and absolute power corrupts absolutely*"

Lord Acton was simply pointing out the sad reality that, as a person's (or an organization's) power increases, his morality (the morality of the people running the increasingly powerful organization) tends to decrease, thereby leading to or encouraging abuses of authority. It will certainly be interesting to see whether or not DSI, with its **originally proposed** monopoly like power over the export of designated Strategic Natural Resources Commodities, proves to be a rare exception to the general truth of Lord Acton's maxim. The likelihood of this being the case would seem to the writer to be **not** very high.

2.2 **CCC Indonesia Letter:** On or about 12 May 2026 (**i.e.,** a little more than one week before the President's 20 May 2026 address to the DPR announcing the New Commodity Export Control Mechanism), the Chinese Chamber of Commerce in Indonesia (**CCC Indonesia**) wrote to the President complaining about (i) ever changing, overly stringent and inconsistently applied regulations, (ii) heavy handed enforcement of regulations (particularly in the forestry sector) and (iii) alleged "extortion" by Government authorities of investors from the People's Republic of China (**PRC**) (**PRC Investors**) in the local mining and metal minerals processing & refining/smelting sectors (**CCC Indonesia 12 May Letter**). As reported in the popular press, the CCC Indonesia 12 May Letter makes particular mention of the frustration experienced by PRC Investors in the downstream **nickel** refining/smelting sector (which is dominated by PRC Investors) as a result of the Government's cutting of individual nickel ore production quotas (**RKAB**) by as much as 70%, a development which CCC Indonesia apparently indicated seriously threatened the continued viability of the downstream industrial ecosystem.

The writer can only guess at the likely reaction of CCC Indonesia (and of its "directing forces") to the subsequent announcement of the New Commodity Export Control Mechanism and the transfer of export control over ferro-alloys (**i.e.**, including nickel related minerals and products) to DSI. In many respects, the New Commodity Export Control Mechanism is a compelling example of the very sort of ever changing, overly stringent and inconsistently applied regulations that CCC Indonesia was complaining so bitterly about in the CCC Indonesia 12 May Letter.

It is hard to avoid the conclusion that the Government's subsequent announcement of an EG Exemption for NPI, just a couple of days after the announcement of the New Commodity Export Control Mechanism, was a belated attempt by the Government to "diffuse" an increasingly acrimonious environment with PRC Investors and thereby avoid getting even more "offside" with PRC Investors than it seemingly already is.

The actual scope of the NPI exemption remains unclear owing to Indonesia's use of separate classifications for Ferronickel (**FeNi**) and NPI. No exemption has been granted for FeNi. This is despite the fact that FeNi, as well as NPI, is commonly used in the downstream stainless steel making process.

While the EG Exemption for NPI can be seen as being just a politically expedient and necessary solution to a growing problem for the Government with PRC Investors, it inevitably casts doubt on the integrity of the policy making underlying the New Commodity Export Control Mechanism as well as on what is the real motivation for and objective of the New Commodity Export Control Mechanism. At the risk of stating the obvious, it seems inherently unlikely to the writer that under-invoicing, transfer pricing and other nefarious practices are any less common in the case of exports of NPI than they are in the case of coal, other ferro-alloy and palm oil exports. It is also interesting to note that the provision for EG Exemptions appears to have been included in the final version of GR 24/2026 at the very last minute as there was most definitely **no** provision for EG Exemptions in an earlier draft of GR 24/2026 seen by the writer. Finally, the stated criteria for granting EG Exemptions are curious to say the least. More particularly, given the supposed focus of GR 24/2026 is controlling/eliminating practices that improperly reduce Government revenue from exports of designated Strategic Natural Resources Commodities, why is it a precondition to the grant of an EG Exemption that the producers of certain Strategic Natural Resources Commodities commit to "*(i) investment, (ii) divestment and (iii) processing and/or refining within Indonesia*"? This could be interpreted as implying that under-invoicing, transfer pricing and other nefarious export practices will, in fact, be tolerated by the Government in certain circumstances if there are "compensating" economic advantages/benefits for Indonesia from other activities carried on by relevant producers. Self-evidently, this is hardly the sort of message the Government should be conveying to producers of Strategic Natural Resources Commodities if the Government wants to be taken seriously in terms of its stated commitment to eradicating the supposed widespread wrongdoing which it claims exists in connection with the export of Strategic Natural Resources Commodities.

2.3 **Latest Manifestation of Move to Command & Control Approach:** It is possible to see the New Commodity Export Control Mechanism, **in the form originally announced by the President**, as being just the latest step in the Government's seemingly inexorable move to adopt a "command & control approach" in dealing with every aspect of the activities/operations of the local mining and natural resources industries. Unfortunately, this "command and control approach" has become one of the "signature" features of the Prabowo presidency.

Since the very beginning of the Prabowo presidency in October 2024, the Government's insistence upon exercising greater control over and ensuring stricter compliance by business actors in the mining and natural resources industries has been all too apparent. In this regard, reference can be made to numerous post-October 2024 legal, policy and regulatory initiatives by the Government, including (i) reversion to the requirement for the preparation and approval of annual mineral production plans and associated expenditure budgets (**RKABs**) after a fleeting "experiment" with 3 year RKABs, (ii) the threatened determination of mining concessions (or other types of business license areas), in respect of which no approved mining business activities (or other types of approved business activities) have taken place for at least 2 years, as "Abandoned Areas" and the subsequent confiscation of these Abandoned Areas, (iii) repeated tightening up of the restrictions on the use of export proceeds from natural resources products (including metal minerals and coal) as well as their various processed and refined versions, (iv) the announcement of a possible moratorium on the issuance of new business licenses/extension or renewal of existing business licenses for mining and other natural resources projects and (v) controversial attempts to have BUMNs take over profitable but supposedly non-compliant mining and other natural resources projects.

In a sense the New Commodity Export Control Mechanism, as well as the numerous other examples of the preferred "command and control" approach of the Government as highlighted above, should not really come as any surprise to observers of the current Indonesian political scene. This is because the President made his intentions very clear even before he became president.

In October 2023 and in the run-up to the February 2024 presidential election, a book was published under the title "*Strategic Ideas – Prabowo Subianto – National Transformation*

Strategy towards a Golden Indonesia 2045 – Indonesia is Becoming a Developed and Prosperous Country" (**GI45 Book**). The GI45 Book outlines the now President's claimed views on the Indonesian economy and why it has, to date, failed to deliver the material advancement and prosperity to which all Indonesians are supposedly "entitled" (**Golden Indonesia**). The GI45 Book also sets out the specific programs, goals and nation building ideals that need to be implemented, achieved and realized in order to finally deliver Golden Indonesia by 2045, being the centenary of Indonesia's declaration of independence (**Golden Indonesia 2045**).

The GI45 Book outlines the President's thinking that, unless and until there are fundamental changes made to how Indonesia's resources of renewable energy, coal, metal minerals and oil & gas (as well as agricultural, forestry and maritime products) (together, **Natural Resources**) are **controlled, developed and managed**, Golden Indonesia 2045 will **not** become a reality.

With respect to Natural Resources, the GI45 Book demands[6] the full and unconditional/unqualified application of IC Article 33(3) which provides that:

> "*The land, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people*."

The GI45 Book is particularly critical[7] of a subsequent 2002 amendment to IC Article 33; namely, the insertion of Paragraph (4) (**IC Article 33(4)**) which provides that:

> "*The organisation of the national economy* ***shall be conducted on the basis of economic democracy*** *upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.*"

According to the GI45 Book, Paragraph (4) of IC Article 33 "*clashes with Paragraph 1 to Paragraph 3 because it makes the Indonesian economy a* ***free market economy.***"[8]

The GI45 Book is unequivocal in asserting that Indonesia's failure to achieve the same level of economic success as China is directly attributable to allowing "*economic democracy*", as subsequently provided for in IC Article 33(4), to have an important role in the management of the country's "*important production branches*" and Natural Resources. More particularly, the relevant section of the GI45 Book concludes by saying:

> "*The root cause, or root of our economic problems, is in Article 33 which has been replaced and is not implemented wholeheartedly*."[9]

The GI45 Book's proposed solution, to Indonesia's economic problems and, thereby, how to make possible the realization of Golden Indonesia 2045, is expressed in extremely simplistic terms as follows:

> *"To fix this, we must return our constitution to its original text, the version of 18 August 2045. In this way, the Indonesian economy will be controlled by the Indonesian people, and the country will have savings to develop*." [10]

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[6] GI45 Book (English translation/version), page 122.

[7] GI45 Book (English translation/version), pages 122 - 123.

[8] GI45 Book (English translation/version), page 123.

[9] GI45 Book (English translation/version), page 123.

[10] GI45 Book (English translation/version), page 123.

2.4 **More Nuanced Understanding of IC Article 33(3) Required:** There is an obvious dilemma (not to say a potentially serious constitutional problem) for the President in relying so heavily upon IC Article 33(3) to justify his Government's "command and control approach" to the local mining and natural resources industries, including by way of introducing the New Commodity Export Control Mechanism. The dilemma is that (like it or not) IC Article 33(4) is just as much a part of the **current** wording of the 1945 Constitution as is IC Article 33(3). In October 2024, the President swore (as part of every incoming president's oath of office) to (among other things) "*uphold the Constitution*"; that is, **the 1945 Constitution in its entirety and as currently worded**, **not** just those parts of the 1945 Constitution which the President likes (**i.e.**, IC Article 33(3) or the **original but no longer current** wording of the 1945 Constitution, while studiously ignoring those parts of the 1945 Constitution **as it is currently worded** that the President does not like (**i.e.**, IC Article 33(4)).

It is interesting to note that constitutional law scholars have interpreted the four amendments made to the 1945 Constitution (including the introduction of IC Article 33(4) in 2002), following the fall of President Soeharto and the end of the New Order era in 1998, as being part of an endeavour to, among other things, (i) make the 1945 Constitution **more democratic**, modern, comprehensive and responsive to any new demands, (ii) **prevent re-emergence of authoritarian government**, which arose during the Old Order government (**i.e.**, Soekarno era) and New Order government (**i.e.**, Soeharto era) and (iii) prevent/reduce the practice of corruption, collusion and nepotism. [11]

IC Article 33(4) is **not** intended to reduce or substantially limit the State's constitutional authority pursuant to IC Article 33(3). Rather, IC Article 33(4) is intended to provide interpretive principles that are meant to guide the exercise of that authority. Accordingly, State control over natural resources is meant to be exercised consistently with the principles of **economic democracy**, fairness, sustainability, environmental awareness and national economic unity as set out in IC Article 33(4).

It is hard, however, **not** to see the New Commodity Export Control Mechanism as being the very antithesis of "economic democracy" as specified in IC Article 33(4), something which the Government (and the President) is meant to ensure is reflected in how the State exercises its control over natural resources in reliance upon IC Article 33(3). This includes with respect to the New Commodity Export Control Mechanism.

SUMMARY & CONCLUSIONS

We still only have a very imperfect understanding of how the New Commodity Export Control Mechanism was originally intended to work, far less of how it will work in practice following the "second thoughts" that are apparently now being expressed, by "*certain unnamed Government officials*" and Danantara, about the scope of the New Commodity Export Control Mechanism.

Giving DSI an effective monopoly, on the export of designated Strategic Natural Resources Commodities, would be a major and far-reaching structural change that has potentially huge (and,

[11] Sarsito, Totok, "*The Indonesian Constitution of 1945: Why it was amended. (2020)*". Journal of International Studies, 3, 89. https://e-journal.uum.edu.my/index.php/jis/article/view/7872. See also Taufik, Giri "*The Interpretation of Article 33 of the Indonesian Constitution and Its Impact on Independent Regulatory Agencies*". Australian Journal of Asian Law, 2020, Vol 20 No 2, page 10.

indeed, hugely negative) implications for producers and traders of designated Strategic Natural Resources Commodities as well as for foreign buyers of designated Strategic Natural Resources Commodities.

It will, of course, be a positive development if the scope of the New Commodity Export Control Mechanism is scaled back to become an export price monitoring and verification system only. However, this possible "flipflop" only serves to highlight how defective was the policy making underlying the announcement of the New Commodity Export Control Mechanism on 20 May 2026. Consultation with industry, **prior to** the announcement of the New Commodity Export Control Mechanism, would have quickly made clear to the Government the numerous practical problems associated with implementing the New Commodity Export Control Mechanism as originally envisaged. The fact that there was, apparently, **no** such prior industry consultation, indicates the existence of a fundamental weakness in the Government's approach to policy making in respect of the mining and other natural resources sectors. This defective policy making approach is, arguably, at the very heart of the loss of confidence in Indonesia, as a reliable investment destination, currently playing out in financial markets and among foreign investors.

The uncertainty, which now exists about the future implementation of the New Commodity Export Control Mechanism, is only likely to make the situation worse as far as financial markets and foreign investors are concerned.

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