CHRISTIAN TEO & PARTNERS
(in association with Stephenson Harwood)

MIXED MESSAGES FOR INVESTORS – TWO RECENT REGULATORY CHANGES [1][2][3][4][5]

INTRODUCTION

At a time when investors are becoming increasingly concerned about the short to medium term prospects for the local mining industry, two recent regulatory changes send very mixed messages as to whether the regulatory environment is getting better or worse for investors.

The latest changes to the natural resources export proceeds regulation are encouraging as they potentially relax the onshore export proceeds deposit requirement for at least certain categories of natural resources exporters under certain conditions. On the other hand, a new regulation dealing with minimum/maximum compulsory profit sharing by mining companies, which obtain mining business licenses on a priority basis in certain circumstances and without having to go through a public auction/tender process, evidences a worrying lack of understanding on the part of the Government as to the economic realities of mineral exploration.

In this article, the writer will review the two highlighted regulatory changes and their mixed messages before turning to the potential implications of these changes for investors in the local mining industry.

BACKGROUND

Aggressively promoting the **claimed** "national interest", by way of expansively interpreting and applying Article 33(3) of the Indonesian Constitution (**IC Article 33**), has been the dominant theme of many of the legal, policy and regulatory changes that have impacted the local mining and other natural resources industries during the current President's term of office which commenced in October 2024.

Aspects of the claimed "national interest", which have received particular attention, include (i) ensuring that mining companies (and other companies having business licenses to exploit Indonesia's natural resources) fully repatriate to Indonesia their export sales proceeds (**SDA-DHE**) (**SDA-DHE Onshore Retention**) and (ii) broadening the range of local entities and institutions that may participate in the economic benefits to be derived from the exploration and development of Indonesia's mineral resources by obtaining, directly or indirectly, mining business concessions

[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.

[5] An earlier version of this article appeared in the July - August 2026 issue of Coal Metal Asia Magazine.

(**WIUPs**) and special mining business concessions (**WIUPKs**) for metal minerals and coal (together, **Mining Concessions**) on a priority application basis and without having to go through a public auction/tender process (**Social Engineering Advancement**).

With respect to SDA-DHE Onshore Retention, the President has been particularly critical of mining companies and other natural resources companies which do not fully repatriate to Indonesia their SDA-DHE. According to the President, such companies pose a threat to Indonesia's "*national interest*". More particularly, during the last cabinet meeting of 2025, the President was quoted as having said that these companies:

> *"... receive [mining] concessions ……, receive IUPs, ... earn profits [but are] not willing to place the profits in Indonesia.* ***I deem that as not benefitting the national interest and people's interest. If we let that keep happening, we are negligent****..."*

The focus on SDA-DHE Onshore Retention has seen repeated moves by the Government to increase the SDA-DHE percentage and extend the period of time that SDA-DHE must be kept in Indonesia as well as to further restrict the uses that may be made of SDA-DHE while it is meant to be kept in Indonesia. As a consequence, the applicable SDA-DHE percentage has been increased from 30% to 100% (except for oil & gas SDA-DHE) while the onshore retention period has been increased from 3 months to 12 months (except for oil & gas SDA-DHE).

In terms of Social Engineering Advancement, 2025 amendments to Law No. 4 of 2009 re Mining of Minerals & Coal (**4th 2009 Mining Law Amendment**) made it possible, for the first time, for (a) cooperatives, small and medium sized business entities and business entities owned by religious organizations to obtain **large scale** as well as small scale coal/metal minerals Mining Concessions by priority (**i.e.**, without having to go through a public auction/tender process) as well as by public auction/tender and (b) private business enterprises (as well as state-owned enterprises (**BUMNs**) and regional government-owned enterprises (**BUMDs**)) to obtain **large scale** as well as small scale coal/metal minerals Mining Concessions by way of priority and without having to go through a public auction/tender process if the relevant BUMN/BUMD/private business entity (i) has a cooperation agreement with an accredited university and (ii) the cooperation agreement provides for an **unspecified** "*portion*" of the "*benefits*" from operating the resulting Mining Concession to go to the relevant university "*in order to increase the independence and excellence of higher education"/"improve public access to education services*".

The Minister of Energy & Mineral Resources (**MoEMR**) was very direct and open in making clear that these particular changes were directed at Social Engineering Advancement. At the Indonesia Economic Summit on 19 February 2025, MoEMR remarked:

> "*Yesterday, I just finished ratifying the Minerba Law [*4th 2009 Mining Law Amendment*] at the Plenary Session.* ***So, this is a constitutional jihad to restore the spirit, meaning, substance and objective of Article 33 of the 1945 Constitution*** *where all state wealth - whether on land, sea or air – must be controlled by the state and utilized as much as possible for the welfare of the people*."

As reported by the Acting Head of the Bureau of Communication, Public Information Services and Cooperation on 20 February 2025, MoEMR later remarked at the Indonesia Economic Summit that the intention was to provide an opportunity for local communities to be able to manage natural resources in their areas and that, while existing Mining Concessions/mines can continue to operate as is, new Mining Concessions/mines should be given to the local communities wherever possible. More particularly, MoEMR was quoted as having said:

"*so that people from Jakarta and people from the regions can progress together, so that they are strong, so that our Gini ratio index is not too wide, too many. We need strong new entrepreneurs. This is what we will push as a form of equality.*"

Two recent regulatory changes have provided important additional insights as to how the Government's interpretation and intended application of SDA-DHE Onshore Retention and Social Engineering Advancement have continued to evolve. These recent regulatory changes are to be found in (i) Government Regulation No. 21 of 2026 **GR 21/2026**) re Third Amendment to Government Regulation No. 36 of 2023 re Export Proceeds from Natural Resource Exploitation, Management and/or Processing Activities (**GR 36/2023**) and (ii) MoEMR Regulation No. 7 of 2026 re Risk Based Licensing of Business Activities Standards in the Energy & Mineral Resources Sectors (**MoEMR Regulation 7/2026**).

GR 21/2026 and MoEMR Regulation 7/2026, as well as their respective implications for SDA-DHE Onshore Retention and Social Engineering Advancement, are the focus of the balance of this article.

COMMENTARY

1. GR 21/2026 – SDA DHE Onshore Retention

1.1 **Outline of Article 18A Amendments:** GR 21/2026 introduces, with effect from 1 June 2026, some potentially very important exceptions to/modifications of the generally applicable rules on SDA-DHE Onshore Retention which were only amended and restated earlier this year by Government Regulation No. 2 of 2026 re Second Amendment to GR 36/2023 (**GR 2/2026**). More particularly, GR 21/2026 amends Article 18A of GR 26/2023 as most recently amended by GR 2/2026 (**Article 18A Amendments**).

The Article 18A Amendments only apply in the case of (i) companies/investors in the local **mining industry** and (ii) which companies/investors are able to claim the benefit/protection of a "***bi-lateral trade-related understanding or arrangement***".

The generally applicable rules on SDA-DHE Onshore Retention and the exceptions/modifications to the same made by the newly introduced Article 18A Amendments may be summarized in table form as follows:

RELEVANT ISSUE	GENERALLY APPLICABLE SDA-DHE ONSHORE RETENTION RULES	EXEMPTIONS/MODIFICATIONS UNDER ARTICLE 18A AMENDMENTS
Applicability	Companies having business licenses to exploit and export mining, plantation, forestry and fisheries natural resource products, with annual SDA-DHE in excess of US$250,000 (unless otherwise exempted)	Specifically for the implementation of **bilateral agreements regarding trade or other agreements regarding trade**

RELEVANT ISSUE	GENERALLY APPLICABLE SDA-DHE ONSHORE RETENTION RULES	EXEMPTIONS/MODIFICATIONS UNDER ARTICLE 18A AMENDMENTS
Mandatory Placement Percentage	a. 100% of SDA-DHE (other than for oil and gas SDA-DHE); and b. 30% for oil and gas SDA-DHE (*Article 7 of GR 36/2023 as amended by GR 8/2025*)	30% for mining industry SDA-DHE only
Mandatory Placement Period	a. Not less than 12 months for SDA-DHE (other than oil and gas SDA-DHE); and b. Not less than 3 months for oil and gas SDA-DHE (*Articles 5(2) and 7 of GR 36/2023 as amended by GR 8/2025*)	Not less than 3 months for mining industry SDA-DHE only
Authorized Institution / Allowed Media for Placement	a. State-owned banks; b. Instruments issued by Bank Indonesia; and/or c. Government Bonds / Syariah Government Bonds (*Article 8 of GR 36/2023 as amended by GR 2/2026*)	Banks Conducting Business Activities in Foreign Currency designated by **Bank Indonesia**.
Authorized Institution for Rupiah Conversion	State-owned banks (*Article 11A(1) of GR 26/2023 as amended by GR 2/2026*)	Banks Conducting Business Activities in Foreign Currency designated by **Bank Indonesia**.

It is interesting to speculate on what was the real catalyst/explanation for the Article 18A Amendments. While other explanations are certainly possible, a likely explanation would seem to be that those Article 18A Amendments, which reduce the mandatory SDA-DHE placement percentage and the mandatory SDA-DHE placement period, reflect the Government's acceptance (no doubt reluctant) that Indonesia will not be able to avoid eventually ratifying, in some form, the Agreement on Reciprocal Trade which was signed by Indonesia and the United States of America on 19 February 2026 (**ART**). In this regard, Annex III – Article 2.27 of ART provides that:

> *"**Indonesia shall review the requirement for natural resource exporters to onshore export proceeds** [SDA-DHE] **for any amount of time as it applies to U.S. investors**. **Within 12 months** of the date of entry into force of [ART], Indonesia shall permit the transfer of export proceeds for **natural resource investments [SDA-DHE] freely and without delay, at a market rate of exchange, into and out of its territory as it relates to U.S. investors**."*

It is possible (although by no means certain) that Indonesia and the United States of America may have subsequently agreed (most probably and if at all, just informally at this stage) that, notwithstanding the absolute obligation imposed on Indonesia to remove the SDA-DHE Onshore Retention obligation in the case of U.S. investors, a much-reduced mandatory SDA-DHE placement percentage and a much-reduced mandatory SDA-DHE placement period of 30% and 3 months respectively, applicable to U.S. investors in the local mining industry only, will be at least minimally acceptable to the United States of America.

Indonesia is party to Comprehensive Economic Partnership Agreements (**CEPAs**) with Australia, Canada and the European Union. Each of these CEPAs contains similar provisions which "guarantee" investors from these countries/regions so-called "most favoured nation treatment" (**MFNT**). More particularly, Article 14.5 of I**A**-CEPA (**i.e.**, the Australian investment/trade treaty with Indonesia) and Article 13.7 of I**C**-CEPA (**i.e.**, the Canadian investment/trade treaty with Indonesia) provide that:

> *"1. **Each Party shall accord to investors of the other Party treatment no less favourable than it accords**, **in like circumstances**, to investors of a non-Party with respect to the **establishment**, **acquisition**, expansion, management, **conduct, operation** and sale or other disposition of an investment in its territory.*
>
> *2. **Each Party shall accord to a covered investment treatment no less favourable than it accords**, **in like circumstances**, to investments of investors of a non-Party with respect to the **establishment, acquisition**, expansion, management, **conduct, operation** and sale or other disposition of an investment in its territory."*

A somewhat less expansive MFNT provision is to be found in Article 8.9 of the recently finalized/signed EU-I CEPA (**i.e.**, the European Union investment/trade treaty with Indonesia).

While the qualification "*in like circumstances*" potentially offers the Government some room to argue otherwise, the Article 18A Amendments (as they relate to the much reduced mandatory SDA-DHE placement percentage and the much reduced mandatory SDA-DHE placement period) likely reflect the Government's acceptance (again no doubt reluctant) that Indonesia will not be able to avoid according MFNT to Australian, Canadian and European Union investors in the local mining industry once it reduces the mandatory SDA-

DHE placement percentage and the mandatory SDA-DHE placement period for U.S. investors in the local mining industry.

It would be prudent for Australian, Canadian and European Union investors in the local mining industry to assume that, it will only be once (i) ART is eventually ratified in some form by both the United States of America and Indonesia and (ii) U.S. investors in the local mining industry actually become entitled to the benefit of the much reduced mandatory SDA-DHE placement percentage and the much reduced mandatory SDA-DHE placement period that they will be entitled to claim the benefit of the relevant Article 18A Amendments in reliance upon the MFNT provisions in their respective countries' CEPAs with Indonesia.

The real catalyst/explanation for the less restrictive limitations, as a result of the Article 18A Amendments, on the relevant Indonesian institutions, which are authorized to accept mining industry SDA-DHE onshore placements and handle the conversion of mining industry SDA-DHE to Rupiah for permitted domestic transactions, is also not clear. However, again, it could reflect the outcome of discussions/negotiations between the United States of America and Indonesia over a modified version of ART that is minimally acceptable to both countries and capable of ratification. Alternatively, this aspect of the Article 18A Amendments could also be the result of concerted "pushback" by Indonesia's private banks against the inherent inequity of giving State banks an effective monopoly on mining industry SDA-DHE onshore placements and the conversion of mining industry SDA-DHE to Rupiah for permitted domestic transactions. The risk of distorting/further distorting competition in the local banking industry, as a result of this monopoly introduced by GR 2/2026, was the subject of much unfavourable press coverage in early June 2026.

1.2 **Significance of Article 18A Amendments:** The Article 18A Amendments will be warmly welcomed by Australian, Canadian and European investors, as well as by U.S investors (assuming that ART is ratified in some form or another), in the local mining industry as an important move, in the right direction, by the Government to somewhat reduce the onerous consequences of the SDA-DHE Onshore Retention obligation for at least some foreign investors in some circumstances.

The Article 18A Amendments are also an encouraging sign that the Government intends to ensure that Indonesia honours its commitments under the CEPAs with Australia, Canada and the European Union, including with respect to the MFNT provisions of each of these CEPAs. Time may well show that MFNT is, in fact, one of the most significant benefits and protections offered by the CEPAs to Australian, Canadian and European Union investors in the local mining industry.

2. <u>MoEMR Regulation 7/2026 – Social Engineering Advancement</u>

2.1 **Outline of Annex 1 of MoEMR Regulation 7/2026:** Annex 1 of MoEMR Regulation 7/2026 specifies that private business enterprises (including PMA Companies) (as well as BUMNs and BUMDs), which obtain Mining Concessions (whether WIUPs or WIUPKs) and resulting Mining Business Licenses (whether IUPs or IUPKs) (i) by way of priority (**<u>i.e.</u>**, without having to go through a public auction process) and (ii) on the basis of a cooperation agreement with an accredited university, must ensure that the relevant university receives **<u>at least 60%</u>** of the **<u>net profits</u>** resulting from the development and exploitation of the relevant Mining Concession.

Although the proposed minimum/maximum 60%/40% net profit split was originally referred to in GR 39 of 2025 (see Articles 26D and 76D), Annex 1 of MoEMR Regulation 7/2026 now makes clear, for the first time, that this is an absolute obligation of relevant IUP/IUPK holders, failure to comply with which may result in the imposition of administrative sanctions on relevant IUP/IUPK holders. These sanctions potentially include revocation of their IUPs/IUPKs.

It is notable that Annex 1 of MoEMR Regulation 7/2026 does **not** include any "grace period", after the commencement of commercial production and before the minimum/maximum 60%/40% net profit split obligation applies, during which the IUP/IUPK holder has an absolute claim on all the next profits in order to recover at least some of its exploration, development and operating expenses to date. These exploration, development and operating expenses will have been 100% funded by the relevant IUP/IUPK holder and its investors/shareholders/financiers, which IUP/IUPK holder and its investors/shareholders/financiers will have also borne 100% of the risk that no commercially exploitable mineral resource is ever identified and proven on the relevant Mining Concession.

The Director General of Minerals & Coal has correctly pointed out that Annex 1 of MoEMR Regulation 7/2026 only specifies the minimum/maximum net profit split for one particular category of mining projects; namely, mining projects carried out on Mining Concessions obtained by priority as a result of cooperation with a university and not any other type of mining project.

2.2 **Significance of Annex 1 of MoEMR Regulation 7/2026:** The minimum/maximum 60%/40% net profit split mandated by Annex 1 of MoEMR Regulation 7/2026 wholly fails to take into account the harsh realities of mineral exploration and this failure is likely to make the possibility of cooperation with universities, as a means of obtaining Mining Concessions by priority application rather than through public auction, **not** a viable commercial proposition that any private business enterprise would seriously consider.

There has been a huge drop-off in exploration mining activity in Indonesia over the course of recent years. While this drop-off can be partly explained by movements in the mineral commodity price cycle, Indonesia has fared significantly worse than other geologically prospective countries in terms of declining exploration mining activity.

In November 2015, the Indonesian Forum for Mineral Exploration and Development Association (**EMD Indonesia**) made a very detailed, written submission to the Government on the problems facing the local mineral exploration industry and what was required to "*encourage a healthy and contributory exploration sector*" in Indonesia (**2015 EMD Indonesia Submission**).

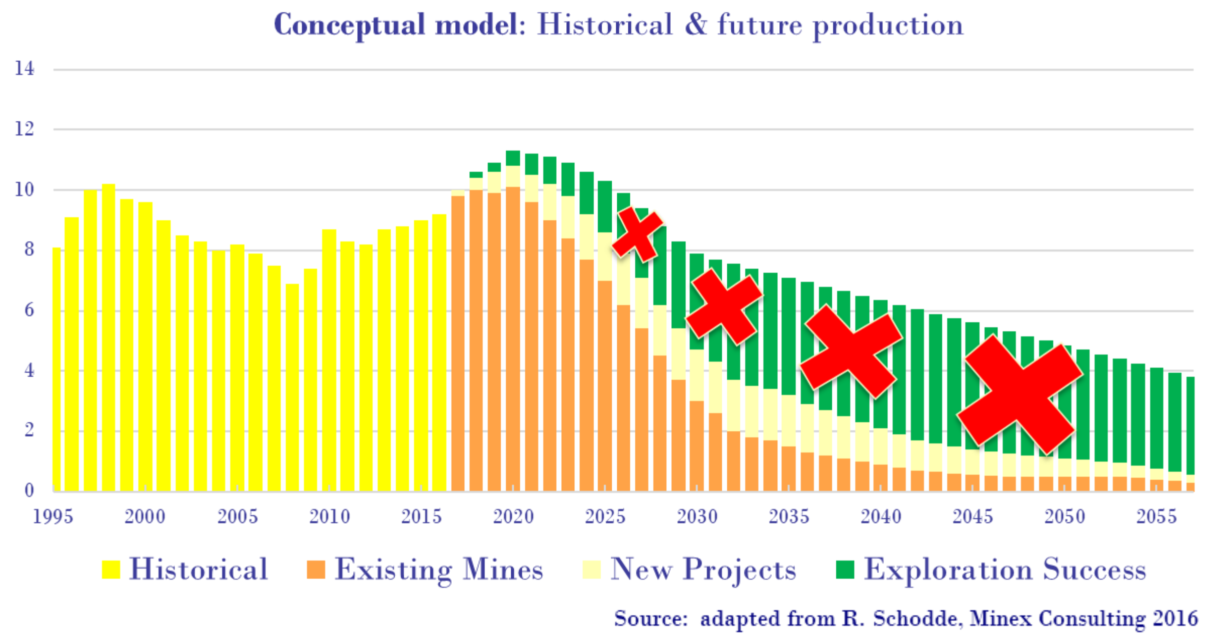
The 2015 EMD Indonesia Submission identified that Indonesia had only been spending the very modest amount of approximately US$100 million per annum on mineral exploration, most of which went towards "brown fields exploration" rather than towards "green fields exploration". A 2017 World Bank Group presentation highlighted that Indonesia merely attracted about 1% of global mineral exploration spending in 2015 compared to 5.2% of global mineral exploration spending in 1995. A more recent 2022 report on the Indonesian mining industry by Price Waterhouse Coopers (**PWC**) states that:

> *"Despite its geological potential, Indonesia has yet to capture a fair proportion of the global exploration spend. Indeed, Indonesia has consistently received less than*

2.5% of the global exploration budget during the period from 2006 to 2014, and less than 2.0% during the period from 2015 to 2021, which is extraordinarily low when compared to its mineral potential."

Regardless of whether the correct figure is currently "about 1%" (as suggested by the World Bank) or "less than 2.0%" (as suggested by PWC), there is clearly a huge "disconnect" between Indonesia's percentage share of global mineral exploration spending and its widely accepted status as one of the world's most geologically rich countries.

Persistent under-spending on mineral exploration in Indonesia inevitably means that, as Indonesia's existing mines reach the end of their commercial life, there will be a wholly insufficient "pipeline" of new mining projects that can be brought into operation on a timely basis. The following diagram illustrates very well this potential problem for the Indonesian mining industry:



The 2015 EMD Indonesia Submission also highlights that (i) mineral exploration is a hugely costly and a high-risk business and (ii) the right to explore does not guarantee that an economic deposit will be found. According to the 2015 EMD Indonesia Submission:

"*In fact, the odds [of finding an economic deposit] are less than 1 in 100 that this will occur. The only certain outcome is the addition to geological knowledge.*

There is a general misconception that the acquisition of a [mining] license to explore is also a license to print money. Nothing could be further from the truth. The only thing which can be said with certainty is that the chances of making an economic discovery are directly proportional to the amount of money spent on the ground by active explorers, and the quality of the exploration program."

The small chance of exploration resulting in finding an economic mineral deposit and the even smaller chance of any economic mineral deposit that is found eventually reaching the commercial production stage means that mineral exploration companies have to be assured of a level of return on their investment, in the case of the very rare project that actually reaches commercial production, which return compensates them/represents a reasonable return on capital for both (i) the capital expended on the 1 successful project **and** (ii) the capital expended on the other 99 unsuccessful projects.

The 2015 EMD Indonesia Submission goes on to explain the importance of there being appropriate financial incentives for mineral exploration, given its costly and high-risk nature. This includes government provided financial incentives in one form or another. As the authors of the 2015 EMD Indonesia Submission remark:

> "*Governments in resource-rich countries often provide support and incentives to encourage grassroots exploration. This support includes free access to public data, including from government surveys and mapping. Subsidies and rewards for successful exploration outcomes are also provided.* ***This, however, is not the case in Indonesia***."

At the risk of stating the obvious, the minimum/maximum 60%/40% net profit split mandated by Annex 1 of MoEMR Regulation 7/2026 is likely to fall far short of the level of financial incentives that private business enterprises (including PMA Companies) need in order to make it worthwhile for them to assume 100% of the risk and 100% of the associated cost of exploring and developing a Mining Concession obtained by priority and as a result of cooperation with a university.

Notwithstanding that Annex 1 of MoEMR Regulation 7/2026 only specifies the minimum/maximum net profit spilt for one particular category of mining projects where the relevant Mining Concession is obtained on the basis of priority, potential private sector investors will be understandably concerned about its possibly broader implications. More particularly, potential private sector investors may well be concerned that the minimum/maximum 60%/40% net profit split mandated by Annex 1 of MoEMR Regulation 7/2026 is at least indicative of the Government's current thinking as to what is a reasonable profit split in the case of other types of mining projects carried out on Mining Concessions obtained by priority and where the relevant IUP/IUPK is held by a BUMN, BUMD, cooperative, small or medium sized enterprise or a religious organization business entity but where the required financing and the mining expertise are provided by third party private business enterprises (including PMA Companies).

Further to the above, it is important to note that all coal and metal mineral Mining Concessions (and the resulting IUPs/IUPKs) can, at least in theory, now be obtained on the basis of priority application by entities and institutions "favoured" by the Government in the pursuit of its objective of Social Engineering Advancement and without these "favoured" entities/institutions having to participate in a public auction/tender process. As a consequence, the scope for public auctions/tenders of Mining Concessions, in which private business enterprises (including PMA Companies) compete on the basis of a more or less "level playing field" with other auction/tender participants, has been greatly reduced. It is only if there is **no** "favoured" entity/institution which is both (i) interested in obtaining a particular coal or metal mineral Mining Concession and (ii) able to meet the applicable administrative, financial and technical requirements that the relevant coal or metal mineral Mining Concession will then be offered by way of public auction/tender. Again, at the risk of stating the obvious, it is hard to believe that any available/offered Mining Concession, with even modest coal/metal mineral-bearing potential, will **not** attract the covetous interest of at least one "favoured" entity/institution, thereby making it increasingly likely that it will only be those Mining Concessions, with very little coal/metal mineral-bearing potential or having other unattractive features such as poor access or remoteness of location, which ever become the subject of public auctions/tenders. Accordingly, private business enterprises (including PMA Companies) may well be increasingly confined to "supporting roles" as the providers of funding and mining expertise to Government-favoured entities and institutions which receive Mining Concessions by way of priority. This is why any indication as to what the Government possibly regards as being an "appropriate" minimum/maximum profit share, as between "favoured" entities/institutions obtaining Mining Concessions by priority and the private business enterprises (including PMA Companies) supporting them with funding and mining expertise, will probably become progressively more important in an aggressively pursued Social Engineering Advancement environment.

SUMMARY & CONCLUSIONS

The Article 18A Amendments and Annex 1 of MoEMR Regulation 7/2026 send very mixed and inconsistent messages to existing and potential investors in the local mining industry.

The Article 18A Amendments are a "good news" message that may cause at least some investors to wonder if Indonesia is getting closer to finally "turning the corner" on a very challenging period for the local mining industry in terms of the applicable legal, policy and regulatory regime. Unfortunately, Annex 1 of MoEMR Regulation 7/2026 is a "bad news" message that suggests the Government is still a long way away from understanding what is really required, in terms of financial and other incentives, to ensure that there is a meaningful and appropriate level of mineral exploration in Indonesia. It would seem Indonesia may have indeed gone backwards, in terms of the available financial incentives for mineral exploration, since 2015 and the preparation of the hugely insightful 2015 EMD Indonesia Submission.

****

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 ten offices across Asia, Europe, and the Middle East: Al Khobar, Athens, Dubai, Hong Kong, London, Paris, Riyadh, Seoul, Shanghai and Singapore

Get in touch

Bill Sullivan

T: +62 21 5020 2789
E: bsullivan@cteolaw.com

Christian Teo

T: +62 21 5020 2789
E: cteo@cteolaw.com

Claudius Novabianto

T: +62 21 5020 2789
E: cnbianto@cteolaw.com