



NEWSLETTER

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NEW DECREE ON SANCTIONS FOR DELAY IN SMELTER CONSTRUCTION IS ISSUED

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The Minister of Energy and Mineral Resources (the “MEMR”) recently issued Decree No. 154 K/30/MEM/2019 regarding Guidelines for Imposing Administrative Fines for Delay in Smelter Construction (“MEMR Decree 154”) which became effective as of August 26, 2019. MEMR Decree 154 sets out details of sanctions to be imposed by the Government on companies which fail to construct smelters within the approved timeline. MEMR Decree 154 also requires such companies to provide a surety bond which can only be withdrawn after 75% (seventy five percent) of the total smelter construction has been completed.

Background

Law No. 4 of 2009 on Mineral and Coal Mining (the “2009 Mining Law”) requires smelting and processing of minerals to be carried out in Indonesia. The 2009 Mining Law provides that mining companies should satisfy the requirements to construct smelting and processing facilities by, latest, January 2014.

Government Regulation No. 1 of 2014 on Second Amendment to Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities (“GR 1/2014”) as supplemented by several implementing regulations, allowed mining companies to export certain mineral concentrates until January 2017. In order to export mineral concentrates, mining

companies are required to pay export duty at a rate which is calculated by reference to the purity of the mineral concentrates as well as the progress of the construction of the mining company's smelting and processing facilities. The issuance of GR 1/2014 was an acknowledgement by the Government that there was insufficient smelting capacity in Indonesia at that time.

Government Regulation No. 1 of 2017 on Fourth Amendment to Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities, as supplemented by several implementing regulations, allowed mining companies to export certain mineral concentrates for a further period of 5 (five) years i.e. until January 2022. The recommendation of the MEMR, which is required for mining companies to export mineral concentrates, will only be granted to companies which have demonstrated commitment to constructing smelting and processing facilities. The MEMR will monitor the progress of construction of smelters every six months and will revoke export recommendations for companies which have not completed 90% (ninety percent) of the scheduled smelter construction.

MEMR Decree 154

(a) **Sanctions**

MEMR Decree 154 provides that, if a mining company fails to complete 90% (ninety percent) of the scheduled smelter construction during a 6 (six) month period based on a progress report from an independent verifier, then :-

- (i) the Director General of Minerals and Coal (the "DGMC") will issue a recommendation for temporary suspension of export approval (to the Director General in charge of foreign trade affairs); and
- (ii) the mining company must pay an administrative fine in the amount of 20% (twenty percent) of the cumulative amount of the company's export mineral sales in the preceding 6 (six) months.

The mining company must pay the administrative fine within 1 (one) month through a bank and must submit evidence of payment to the MEMR within 3 (three) days after the payment is made.

If the mining company pays the administrative fine, then the DGMC will issue a recommendation for revocation of the temporary export suspension provided that the DGMC receives a report from an independent verifier which indicates that at least 90% (ninety percent) of the scheduled smelter construction has been completed within the past 6 (six) months.

If, however, the mining company does not pay the administrative fine, then the MEMR will suspend the business operations of the mining company for up to 60 (sixty) days and will also issue a recommendation for the revocation of the company's export approval. If the mining company does not pay the administrative fine during the 60 (sixty) day period, then the MEMR may revoke the business license of the mining company.

(b) **Surety Bond**

MEMR Decree 154 also provides that, if a mining company fails to complete 90% (ninety percent) of the scheduled smelter construction during a 6 (six) month period, then the company will be required to post a surety bond. The amount of the surety bond will be an amount which is 5% (five percent) of the export volume of shipments based on the export benchmark price (*harga patokan ekspor*). The surety bond can only be withdrawn by the mining company after the mining company has completed 75% (seventy five percent) of the total smelter construction as verified by an independent

verifier. The MEMR can only draw down the bond if the mining company's business licence is revoked as a result of its failure to pay the administrative fine referred to above.

Commentary

MEMR Decree 154 shows the intention of the Government to put more pressure on mining companies to construct smelters in Indonesia in the hope that, by January 2022, there will be sufficient smelting capacity in Indonesia to ensure that mineral concentrates will be processed in Indonesia before being exported.

If you wish to discuss any issues relating to the new decree on sanctions for delay in smelter construction, please contact any of the following MKK attorneys :-

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