

## MANDATORY USE OF BENCHMARK PRICE FOR COAL SALES

April 2025

The Minister of Energy and Mineral Resources issued Decree No. 72.K/MB.01/MEM.B/2025 on the Guidelines for the Determination of Benchmark Prices for Sales of Metal Mineral and Coal Commodities (“**MEMR Decree 72/2025**”) which became effective on 1 March 2025. MEMR Decree 72/2025 essentially mandates benchmark prices for metal minerals and coal as the floor prices for sales other than sales for domestic market obligations. The benchmark prices are calculated based on the formulas set out in MEMR Decree 72/2025, using the reference prices for metal materials and coal as one of the variables. The reference prices for metal minerals and coal are to be stipulated twice a month (on the 1<sup>st</sup> and 15<sup>th</sup>) to reflect fluctuating market conditions.

MEMR Decree 72/2025 marks a significant policy change, especially for coal exports. Previously, the reference price for coal (*Harga Batubara Acuan* or “HBA”) was only used in calculating royalty payments to the government. Coal sales other than sales for domestic market obligations were previously subject only to market pricing, but now it has become mandatory to use the HBA for pricing coal sales.

However, the government-set benchmark coal price has been met with concerns from coal producers, particularly considering the declining prices of thermal coal due to global oversupply. No sanctions are set out in MEMR Decree 72/2025 for non-compliance and MEMR Decree 72/2025 is silent on any grace period for ongoing coal trading. There is also no clarity on the Decree’s effects on existing coal sales contracts, raising questions as to the potential retroactive effect of MEMR Decree 72/2025 on the validity and implementation of existing coal sales contracts. Furthermore, from a legal-regulatory perspective, the benchmark coal price requirement for coal sales in MEMR Decree 72/2025 appears inconsistent with a higher rank regulation, i.e. Minister of Mineral and Energy Resources Regulation No. 7 of 2017 on Procedures for the Determination of Benchmark Prices for Metal Mineral and Coal Sales (as lastly amended in 2020), which only provides that the benchmark coal price constitutes the floor price for calculating royalty payments to the government (but is silent on whether the benchmark coal price will apply to coal sales).

The government is reportedly working on details of the monitoring mechanisms and sanctions for violation of MEMR Decree 72/2025. We are closely monitoring the situation and will update you on further developments.

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