



## Legal Alert

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# Controversial Policies by the Indonesian Government Regarding Coal Export Ban

### **Controversial Policies by the Indonesian Government Regarding Coal Export Ban**

At the end of December 2021, the Indonesian government issued several policies related to coal export through *inter alia* Letters issued by the Directorate General of Mineral and Coal (“**DGMC**”) of the Ministry of Energy and Mineral Resources (“**MEMR**”).<sup>1</sup> These Letters essentially ban the coal export by prohibiting the holders of Mining Business Permits (*Izin Usaha Pertambangan*) (“**IUP holders**”) from selling their coal abroad from 1 January 2022 until 31 January 2022 (“**Stipulated Period**”).

Specifically, the Letter 1611/2021 provides that the DGMC requested for the following authorities to conduct several actions within the Stipulated Period:

- a. Directorate General of Foreign Trade (“**DGFT**”) to suspend Registered Exporter/*Eksportir Terdaftar*;
- b. Directorate General of Customs and Excise (“**DGCE**”) to suspend Exported Goods Notification service/*pelayanan Pemberitahuan Ekspor Barang*;
- c. Directorate General of Sea Transportation (“**DGST**”) to suspend the issuance of Port Clearance/*Surat Persetujuan Berlayar* (“**Port Clearance**”) for the sell of coal abroad.

### **Background and the Grounds to Impose the Coal Export Ban**

Referring to the Letter 1605/2021, the Letter was issued in consideration of the letter dated 31 December 2021 from the President Director of the Indonesian State Owned Enterprise which in charge for the electricity distribution in Indonesia i.e. PT Perusahaan Listrik Negara (Persero)/PLN regarding Crisis of Coal Supply for PLN Steam Power Plant or *Pembangkit Listrik Tenaga Uap* (“**PLTU PLN**”) and Independent Power Producer (“**IPP**”) (“**Letter of Coal Supply Crisis**”). The Letter of Coal Supply Crisis mentioned that supply for coal to power PLTU PLN and IPP are critical and currently scarce, to which will disrupt the operation of PLTU affecting national electricity system.<sup>2</sup>

Further, Letter 1605/2021 mentioned the obligation of IUP holders to meet the domestic needs or Domestic Market Obligation (“**DMO**”) in accordance with the Government Regulation No. 96 of 2021 on Implementation of Mineral and Coal Mining Business Activities (“**GR 96/2021**”) and DGMC’s authority to appoint IUP holders to fulfill the DMO (on behalf of MEMR and in emergency situation wherein the DMO is not being fulfilled).

In addition to the coal export ban, all of the produced coal supply shall be allocated to meet the needs of national electricity production in accordance to their obligation to fulfill the DMO and/or assignments from the Government to the companies and/or contract with PT PLN and IPP.<sup>3</sup>

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<sup>1</sup> Letter No. B-1605/MB.05/DJB.B/2021 on the Fulfillment of Coal Needs for General Electricity (“**Letter 1605/2021**”) and Letter No. B-1611/MB.05/DJB.B/2021 on the Coal Export Ban (“**Letter 1611/2021**”).

<sup>2</sup> Letter 1605/2021, paragraph 1 point 1.

<sup>3</sup> Letter 1605/2021, paragraph 2 point 2.

### **Applicable DMO in Indonesia**

DMO refers to the domestic needs for coal as regulated under MEMR Decree No. 139.K/HK.02/MEM.B/2021 on Fulfillment of Domestic Coal Needs ("**MEMR Decree 139/2021**").

MEMR Decree 139/2021 regulated that the holders of:

1. Mining Business Permit in phase activity of Coal Production Operation or *Izin Usaha Pertambangan tahap kegiatan Operasi Produksi Batubara* (IUP);
2. Special Mining Business Permit in phase activity of Coal Production Operation or *Izin Usaha Pertambangan Khusus tahap kegiatan Operasi Produksi Batubara* (IUPK);
3. Coal Mining Contract of Work in phase of Production Operation or *Perjanjian Karya Pengusahaan Pertambangan Batubara tahap Operasi Produksi* (PKP2B); and
4. Special Mining Business Permit as a Continuation of the Operation of Contract/Agreement or *Izin Usaha Pertambangan Khusus sebagai Kelanjutan Operasi/Kontrak* (IUPK) as a Continuation of the Operation of Contract/Agreement in Coal Production Operation stage,

are obligated to allocate 25% of their annual coal production plan which approved by the government.

The above-mentioned percentage is to fulfill coal needs of: (i) supply of electricity for the public interest and self-interests; and (ii) raw material/fuel for industry. Further, in the event that the domestic demand is not fulfilled, the Government has the right to appoint IUP holders to meet such demand.<sup>4</sup>

As the consequences of failure from the holders of IUP to the abovementioned obligation, point a of the Fourth Paragraph of MEMR Decree 139/2021 stipulates that the Government may impose coal export ban.

### **Responses by the Relevant Stakeholders and Periodic Revocation of Coal Export Ban**

The issuance of Letter 1605/2021 has received a lot of responses *inter alia* from the *Asosiasi Pertambangan Batubara Indonesia* or the Indonesian Coal Mining Association ("**APBI**")<sup>5</sup>, *Kamar Dagang dan Industri Indonesia* or Indonesian Chamber of Commerce and Industry ("**KADIN**")<sup>6</sup> as well as foreign countries that imported coal from Indonesia<sup>7</sup> which in essence expressed their disapproval for the coal export ban. These relevant stakeholders requested the MEMR to immediately revoke the Letter 1605/2021.

<sup>4</sup> MEMR Decree 139/2021, First and Third Paragraph.

<sup>5</sup> Siaran Pers APBI, "APBI Keberatan Atas Kebijakan Larangan Ekspor", dated 1 January 2022, See: <https://www.ruangenergi.com/apbi-keberatan-atas-kebijakan-larangan-ekspor-batubara/>

<sup>6</sup> Kontan, "Protes Larangan Ekspor Batubara, Kadin Klaim Sudah Penuhi 25% DMO ke PLN", dated 1 January 2022, See: <https://nasional.kontan.co.id/news/protes-larangan-ekspor-batubara-kadin-klaim-sudah-penuhi-25-dmo-ke-pln>

<sup>7</sup> CNN Indonesia, "Korsel dan Jepang Kecam Larangan Ekspor Batu Bara RI, dated 9 January 2022, See: <https://www.cnnindonesia.com/ekonomi/20220109081351-85-744292/korsel-dan-jepang-kecam-larangan-ekspor-batu-bara-ri>

Although both Letter 1605/2021 and Letter 1611/2021 does not mention any exception for business that fulfilled their DMO to be exempted from the ban of coal export, it is reported that several businesses have received permission from the DGMC to continue exporting their coal<sup>8</sup>, as supposed to be the response of the above criticisms.<sup>9</sup>

Further, on 13 January 2022, DGMC finally issued the Letter No. B-165/MB.05/DJB.B/2022 on the Revocation of Coal Export Ban ("**Letter 165/2022**"). In this letter, DGMC has periodically lifted the coal export ban, in particular for 18 vessels loaded with coal from PKP2B and IUP Production Operation permit holders that have fulfilled 100% of DMO or more in 2021. Further, the DGST has also issued the Letter No. UM.006/1/7/DA-2022 dated 14 January 2022 on the Revocation of the Ban to Issue Port Clearance ("**Letter 006/2022**") which essentially revoke the ban on issuance of Port Clearance for 18 vessels.<sup>10</sup>

### **Closing Remarks**

Despite the issuance of Letter 1605/2021 was aimed to ensure the fulfillment of DMO and to upend the crisis of coal supply, it clearly has raised scrutiny from foreign and domestic stakeholders within the coal industry.

For the shipping lines/company, the coal export ban may pose as a disruption or delay to the coal shipment which could caused *inter alia* allegation of breach of contract (e.g. Charter Party). In certain circumstances and subject to the content of the contract for the shipment, the shipowners may rely on *Force Majeure* grounds to be excluded from its obligation to deliver the coal cargo as per agreed timeline (for instance, if under the relevant agreement the parties agree that new laws and policies by the government which directly resulted in the fulfillment of the obligations of one party shall constitute as force majeure event).

To avoid uncertainty and concerns from the relevant stakeholders regarding coal export, we view that it is necessary for the Indonesian Government to firstly give notice to and/or coordinate with the holders of IUP with regards to the non-fulfillment of DMO, before issuing policy to impose the ban on coal export. In addition, the issue related to coal selling price discrepancy (between domestic and export selling price) may also be considered to be reviewed in the attempt to boost/encourage the domestic coal suppliers to comply with their DMO.

We will be closely monitoring any further update re. coal export policies and provide the relevant update through separate legal alert.

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<sup>9</sup> Bisnis.com, "Perusahaan Tambang di Kaltim Boleh Ekspor Batu Bara, Kok Bisa?", dated 4 January 2022, See: <https://ekonomi.bisnis.com/read/20220104/44/1485423/25-perusahaan-tambang-di-kaltim-boleh-ekspor-batu-bara-kok-bisa>

<sup>10</sup> Direktorat Jenderal Perhubungan Laut, "Menyusuli Pencabutan Larangan Ekspor Batu Bara, Kemenhub Kembali Terbitkan SPB Kapal Ekspor Batubara Yang Memenuhi Syarat", dated 14 January 2022, See: <https://hubla.dephub.go.id/home/post/read/10947/menyusuli-pencabutan-larangan-ekspor-batu-bara-kemenhub-kembali-terbitkan-spb-kapal-ekspor-batubara-yang-memenuhi-syarat>

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