

THE CAPPING OF COAL SALE PRICE FOR THE SUPPLY OF ELECTRICITY FOR THE PUBLIC INTEREST UP TO 2019 BY THE MINISTER OF ENERGY AND MINERAL RESOURCES



The Minister of Energy and Mineral Resources (“MEMR”) promulgated MEMR Decree No. 1395 K/30/MEM/2018 on 9 March 2018 concerning the Coal Sale Price for the Supply of Electricity for the Public Interest (“MEMR 1395”). MEMR 1395 has been amended by the promulgation of the MEMR Decree No. 1410K/30/MEM/2018 on 12 March 2018 (“MEMR 1410”) (“MEMR Decrees”).

Background

The Indonesia’s Coal Reference Price (“HBA”) continued to rise in 2018. In fact, in March 2018 the HBA reached USD 101.86 per metric ton. Though the HBA has decreased to USD 94.75 per metric ton this April 2018, it is still higher than the last year’s average HBA, which was USD 85.90 per metric ton. This fluctuation of HBA affects the production costs PLN has to bear in supplying electricity for public interest. The fact that most of the domestic electricity supply is generated by the coal-fired power plants and the decision of the Government not to raise the electricity rates until the end of 2019 might, theoretically, make the situation harder for PLN, especially in financial terms.

In these circumstances, PLN has proposed to the Government to immediately determine a ceiling for the coal sale price, specifically for a coal for the supply of electricity for the public interest in Indonesia. PLN suggests the price be capped between a price floor of USD 60 per metric ton and a ceiling of USD 70 per metric ton. Speaking from the perspective of coal supplier, the Indonesia Coal Mining Association (*Asosiasi Pertambangan Batubara Indonesia* (APBI)), on the other hand, has suggested that if the coal sale price has to be capped, it should be capped at USD 85 per metric ton.

Although, the fundamental of setting the suggested capped price still need to be further explored.

MEMR then took action by issuing MEMR 1395, capping the coal sale price for the supply of electricity for the public interest at USD 70 per metric ton, which was intended to be applied retroactively from January 2018, but this was later amended by MEMR 1410, which changed it to be non-retroactively applicable from the date of its enactment, i.e. from 12 March 2018.

Highlights of the MEMR Decrees

The MEMR Decrees mainly provide as follows:

- Under the MEMR Decrees, MEMR sets a ceiling for the coal sale price for the supply of public electricity at USD 70 per metric ton free on board (FOB), specifying coal in the calories of 6,322kcal/kg GAR, total moisture 8%, total Sulphur 0.8%, and ash 15%.
- MEMR also provides formulas to calculate the coal sale price for selling coal with specifications which differ from those mentioned above. If the prevailing HBA is equal to or greater than USD 70, the price is calculated by referring to the USD 70. Otherwise, if the HBA is lower than USD 70, the calculation refers to the prevailing HBA.

- Under the MEMR Decrees, if the HBA is equal to or higher than USD 70 per metric ton, the calculation of the amount of royalty to be paid to the Government refers to the actual coal sale price (*Harga Jual*). Otherwise, the calculation refers to the Indonesian Coal Benchmark Price (HPB).
- Another important point in the MEMR Decrees is that The Government will grant local coal producers with an incentive in the form of a 10% increase of production for the fulfillment of the domestic market obligation, as stated in the MEMR Decree No. 23 K/30/MEM/2018 (“**DMO**”). Under the decree, a local coal supplier is required to allocate at least 25% of the total production to the domestic market before being permitted to export.
- The abovementioned coal sale price applies only for a maximum sale volume of 100 million metric tons per year.
- The MEMR has been in force since 12 March and will be valid until the end of 2019.

Issues and Implications of the MEMR Decrees

The capped coal sale price set out in the MEMR Decrees is said to be applicable only for the coal for supply of electricity for the public interest. However, the scope of the “electricity for the public interest” in the MEMR Decrees is still unclear, as it has not been clearly defined.

If we refer to Law No. 30 of 2009 concerning Electricity, we can interpret that “electricity for the public interest” is the electricity generated by the holder of an electricity supplier license (“**IUPTL**”), which is PLN and the IPPs which hold the IUPTL. This issue must be clarified by MEMR to give clarity for the PLN and the IPPs in doing their business and to ensure the national interest so that the supply of the “electricity for the public interest” is satisfied.

Notwithstanding the above, the enactment of the MEMR Decrees may also reduce the profits obtained by coal suppliers from the increase in the HBA, as the coal sale price is now capped at a maximum of USD 70 per metric ton.

Thus, local coal producers, specifically those focusing on supplying domestic coal needs, have to clearly understand the impact of the new coal sale price set for their coal sales and have to come up with a new strategy to face losses that they might suffer from the enactment of the MEMR Decrees. However, as local coal producers prepare a strategy, PLN and IPP must also be prepared for the impact of the strategies that may be adopted by the local coal producers.

For instance, it is possible that a local coal producer will decide to cover the losses suffered from domestic sales by reducing the volume of coal supplied to the domestic market to an amount sufficient for the fulfillment of DMO and export the rest of the total production. This is supported by the fact that in merely fulfilling the DMO, a local coal supplier is entitled to the incentive in the form of 10% increase in the production capacity which can be exported to obtain additional profit.

As a result, the supply of coal to the domestic market, especially to PLN and the IPPs for the purpose of supply of electricity for the public interest, may decrease. Meanwhile, Indonesia is now in the midst of the program of 35,000 MW, a program initiated by the President of the Republic of Indonesia to fulfill the electricity needs of people in Indonesia from Sabang to Merauke up to 2019 by constructing more power plants reaching a capacity of 35,000 Megawatt. This program will probably require a greater supply of coal for additional coal-fired power plants. It may hinder PLN and the IPPs in realizing the 35,000 Megawatt program and both PLN and the IPPs have to be ready for this.

Further, the MEMR Decrees provide that the cap for the coal sale price thereunder only applies to a maximum sale volume of 100 million metric ton per year and for a period up to 2019. It does not provide further cap on the coal sale price applicable in the event that the sales volume reaches 100 million metric tons before the end of any year or, when the validity period expires, to anticipate the possibility of no regulation being enacted by MEMR for the period following 2019.

Therefore, those matters remain unclear and need to be clarified by MEMR in order to give assurance for stakeholders, particularly the coal mining companies in respect of the stability of their business and revenues.

In addition, it is also advisable for every ongoing coal supply contract to be further reviewed, as there might be several adjustments required, e.g. an adjustment to the coal sale price.

On the other hand, the provisions on force majeure also have to be understood by the parties, as the enactment of the MEMR Decrees may be a trigger for utilization of provisions on force majeure resulting from the change of law or regulations.

-o0o-

*The article above was prepared by **Hendra Ong** (Partner) and **Nadya Vera** (Associate).*

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions or matters. For more information, please contact us at hplaw@hplaw.co.id.

No part of this publication may be reproduced by any process whatsoever without prior written permission from Hanafiah Ponggawa & Partners.