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RETHINKING THE IDR REQUIREMENT AS IT RELATES TO ENERGY, MINING AND O&G COMPANIES – JUST ANOTHER POLICY "FLIP FLOP" [12345]

INTRODUCTION

It has not taken long for the inevitable confusion and pushback, in respect of the recent imposition by Bank Indonesia ("**BI**") of a requirement to use the Indonesian Rupiah ("**IDR**") for all domestic transactions ("**IDR Requirement**"), to make itself felt.

BI has responded to the confusion with (i) a Circular Letter and (ii) a List of Frequently Asked Questions, each dated 1 June 2015, seeking to explain the IDR Requirement. BI also held a Socialization Seminar, in respect of the IDR Requirement, on 4 August 2015. The Ministry of Energy & Mineral Resources ("**ESDM**"), meanwhile, has issued a Press Release, dated 1 July 2015, indicating that energy, mining and oil & gas ("**O&G**") companies will receive special treatment in respect of the application of the IDR Requirement.

Just how effective will be the initiatives by BI and ESDM, to address the IDR Requirement confusion and pushback, remains to be seen. However, it is likely the mishandling of the IDR Requirement was one of the all too frequent policy missteps Indonesia's President had very much in mind when he recently told Ministers and other senior State officials that the policy "flip flops have to stop" because they are undermining investor confidence.

In this article, the writer will review the latest developments regarding the IDR Requirement and, more particularly, the special treatment seemingly promised to energy, mining and O&G companies in terms of compliance with the IDR Requirement.

BACKGROUND

The IDR Requirement is set out BI Regulation No. 17 of 2015, dated 31 March 2015, re Obligation to Use Rupiah in the Territory of the Republic of Indonesia ("**BIR 17/2015**").

The IDR Requirement is meant to have taken effect as of 1 July 2015.

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Readers interested in knowing more about the detailed provisions of BIR 17/2015 and how the IDR Requirement was originally intended to operate, in the context of the energy, mining and O&G industries, are referred to the writer's earlier article "*New IDR Requirement – Implications for Energy, Mining and O&G Industries*" which appeared in the June – July 2015 edition of Coal Asia Magazine.

COMMENTARY

1. BI Circular Letter

1.1 **Overview**: The BI Circular Letter purports to provide clarification of, among other things, three of the exemptions to the IDR Requirement recognized by BIR 17/2015; namely, (i) the Strategic Infrastructure Exemption, (ii) the Case by Case Exemption and (iii) the Existing Contract Exemption.

1.2 **Strategic Infrastructure Exemption**: For the purposes of the Strategic Infrastructure Exemption, "infrastructure projects" are now explained as including (i) transportation infrastructure projects, (ii) road infrastructure projects, (iii) irrigation infrastructure projects, (iv) clean water infrastructure projects, (v) sanitation infrastructure projects, (vi) telecommunications and informatics infrastructure projects, (vii) electricity infrastructure projects and (viii) O&G infrastructure projects (Section IIIA of BI Circular Letter).

Although the specified types of "infrastructure projects" are expressed to be inclusive rather than exclusive, it is most probably the case that any infrastructure project, not falling within any one or more of the specified types, stands little chance of being granted the benefit of the Strategic Infrastructure Exemption. This is significant because, while energy and O&G infrastructure projects are expressly mentioned, mining projects are not mentioned. Accordingly, unless it is possible to bring some particular aspects of a mining project within the specific infrastructure categories of (i) transportation, (ii) roads or (iii) electricity, mining projects will, most likely, **not** qualify for the Strategic Infrastructure Exemption no matter how significant they may be.

Infrastructure projects which do fall within one or more of the specified types will still only qualify for the Strategic Infrastructure Exemption if they are also (i) declared by the Central Government or a Regional Government to be a "strategic" infrastructure project and (ii) granted express approval by BI (BI Circular Letter Section IIIB).

In determining whether or not to grant its approval, BI will take into account (i) the source of project financing and (ii) the impact of the project on macroeconomic stability (BI Circular Letter Section IIIC).

1.3 **Case by Case Exemption**: The BI Circular Letter indicates that, in determining whether or not a Case by Case Exemption will be granted on the basis that a certain business undertaking has "particular characteristics", BI will take into account (A) whether or not (a) compliance with the IDR Requirement would (i) require fundamental changes in business systems, processes and undertakings or (ii) threaten the business' survival and (b) the certain business has a

significant impact on national economic growth as well as (B) the level of past compliance by the certain business with other BI regulations including those BI regulations in respect of (a) the receipt of export proceeds and (b) prudential principles of management of non-bank corporate external debt (BI Circular Letter Section IVB and C).

The above specified considerations might suggest BI will not be readily granting Case by Case Exemptions and certainly not on the basis of mere administrative inconvenience or the likely substantial cost involved in complying with the IDR Requirement unless these things threaten the very survival of a company's business.

Many mining companies, particularly small and medium sized coal mining companies, may also rate poorly in terms of past compliance with the existing BI regulations, on receipt of export proceeds, which is meant to be another consideration in granting Case by Case Exemptions.

1.4 **Existing Contract Exemption**: Finally, the BI Circular Letter makes apparent how restrictively BI intends to apply the Existing Contract Exemption in the case of contracts entered into prior to 1 July 2015.

First, although "existing contracts" are explained in terms that are said to include both (i) the main or master agreement and (ii) any "ancillary agreement or other document specifying how the subject transaction is to be carried out", any agreement that is merely a "derivative or implementation agreement", to the main or master agreement, must comply with the IDR Requirement even if the main or master agreement, itself, is entitled to the benefit of the Existing Contract Exemption (BI Circular Letter Section X 1 and 2). Just what is the distinction between (i) a "derivative or implementation agreement", which must comply with the IDR Requirement, and (ii) "an ancillary agreement or other documents specifying how the subject transaction is to be carried out", which do not have to comply with the IDR Requirement, is nowhere explained and will, unquestionably, be the source of much confusion and uncertainty. Nevertheless, it is made clear that a purchase order or delivery order is to be treated as an "ancillary agreement", which does not have to comply with the IDR Requirement, so long as the underlying main or master agreement has the benefit of the Existing Contract Exemption. Accordingly, we may tentatively conclude that, in the case of long term mineral, coal or O&G domestic offtake or supply agreements entered into prior to 1 July 2015 and having the benefit of the Existing Contract Exemption, individual purchase notices/orders issued by the offtaker/buyer and individual delivery notices/orders issued by the producer/seller, after 1 July 2015, will **not** have to comply with the IDR Requirement.

Second, it is now made clear that **any** amendment to an agreement, entered into prior to 1 July 2015, will result in the pre 1 July 2015 agreement losing the benefit of the Existing Contract Exemption, with "amendments" being specified to include changes in (i) the parties to the agreement, (ii) the price of the goods or services covered by the agreement or (iii) the object of the agreement (BI Circular Letter Section X 3 and 4). The use of the word "any" implies that **no** materiality or significance test will be applied to an amendment with the result that, regardless of how immaterial, innocuous or trivial is the particular amendment, the benefit of the Existing Contract Exemption will be automatically lost once there is an amendment. This

gives rise to the interesting question of how a pre 1 July 2015, long term mining services agreement, containing a standard "rise and fall" provision for the adjustment of such things as the price of diesel to be supplied to a mining company, will be treated once the "rise and fall" provision is triggered by the occurrence of a specified factor such as a change in the applicable fuel subsidy. On its face, there will be a price variation of the goods to be supplied pursuant to the mining services agreement and, therefore, the benefit of the Existing Contract Exemption will be lost. There may, however, be a reasonable argument available that, because the "rise and fall" mechanism is part of the mining services agreement, there is actually no amendment of the mining services agreement as the price increase is already built in and, therefore, the automatic application of the "rise and fall" provision will not cause the mining services agreement to lose the benefit of the Existing Contract Exemption.

Assessment: The BI Circular Letter seems to offer little hope that any or all of the Strategic Infrastructure Exemption, the Case by Case Exemption and the Existing Contract Exemption are going to be liberally interpreted and generously applied by BI. Quite the contrary, a literal interpretation of the BI Circular Letter would indicate that BI intends to recognize very few exceptions to the IDR Requirement and, therefore, it would probably be a mistake for any mining company, in particular, to assume that it will qualify for or be able to maintain, for long, its entitlement to any of the Strategic Infrastructure Exemption, the Case by Case Exemption or the Existing Contract Exemption.

Notwithstanding the foregoing, however, it is now apparent from the ESDM Press Release (as discussed in Part 3 below) that BI has actually been willing to grant Case by Case Exemptions to a large number of O&G companies (and, possibly, energy and mining companies as well) operating in Indonesia. This is despite the fact it seems doubtful (to the writer at least) that individual O&G companies (and, possibly, individual energy and mining companies as well) will have been truly able to establish that the undoubted difficulties and costs they face in complying with the IDR Requirement are materially greater than or different from the difficulties and costs faced by all Indonesian companies (whether O&G, energy and mining companies or otherwise), in complying with the IDR Requirement. BI's generous grant of Case by Case Exemptions, to a large number of O&G companies (and, possibly, energy and mining companies as well), is likely to have had more to do with political pressure, derived from Government budgetary constraints, than with a robust application of Article 16 of BI 17/2015 and the stated requirements for Case by Case Exemptions.

2. BI List of Frequently Asked Questions

2.1 **Overview**: As its name implies, the BI List of Frequently Asked Questions is intended to address those areas of confusion, regarding the proper interpretation and application of the IDR Requirement, in respect of which BI has received the most enquiries.

2.2 **Existing Contract Exemption**: There is an apparent inconsistency with the BI Circular Letter in respect of how the BI List of Frequently Asked Questions explains the Existing Contract Exemption when it comes to derivative or implementation agreements. On a literal reading of Section H 33(b) of the BI List of Frequently Asked Questions, **all** derivative or implementation

agreements, made after 1 July 2015, are subject to the IDR Requirement even if they are **not** independent of a master or main agreement made before 1 July 2015 and which pre 1 July 2015 main or master agreement enjoys the benefit of the Existing Contract Exemption. However, as explained in Part 1.4 above, a literal reading of Section X2 of the BI Circular Letter indicates that it is only those derivative or implementation agreements, made after 1 July 2015, which are independent of a master or main agreement, made before 1 July 2015, which are subject to the IDR Requirement. The BI Circular Letter should, most probably, be given more weight in interpreting the proper application of the IDR Requirement and the approach to derivative or implementation agreements, in the BI Circular Letter, certainly makes considerably more commercial sense. Nevertheless, the highlighted apparent inconsistency between the BI List of Frequently Asked Questions and the BI Circular Letter is surely going to be productive of more confusion and uncertainty, not less, until it is resolved.

2.3 **Assessment**: Despite BI's undoubted good intentions in issuing the List of Frequently Asked Questions, it really adds very little if anything to our better understanding of the proper interpretation and application of the IDR Requirement. In fact, given the inconsistency highlighted in Part 2.2 above, the BI List of Frequently Asked Questions is, arguably, counterproductive.

BI has clearly been overwhelmed by the number and complexity of the questions it has received regarding the proper interpretation and application of the IDR Requirement. As a result and until the Socialization Seminar, BI had stopped responding to such questions. It is unlikely, therefore, there will be any repeat or update of the BI List of Frequently Asked Questions, something which may well be a good thing as will be seen from the writer's comments on the Socialization Seminar in Part 3 below.

3. ESDM Press Release

3.1 **Overview**: The ESDM Press Release indicates that energy, mining and O&G companies are going to receive very special treatment with regard to the need to comply with the IDR Requirement and purports to divide transactions undertaken by energy, mining and O&G companies into three categories, with the transactions falling into each category being promised different concessions with regard to the IDR Requirement.

3.2 **Category 1 Transactions**: Transactions undertaken by energy, mining and O&G companies and which transactions "can" immediately comply with the IDR Requirement are classified as "Category 1 Transactions".

ESDM gives as examples of Category 1 Transactions office, house and car/truck leases as well as agreements for various support services.

Energy, mining and O&G companies are given a fixed "transition" period of six months (**i.e.**, until 1 January 2016) to comply with the IDR Requirement in the case of Category 1 Transactions.

There are a number of obvious issues in respect of Category 1 Transactions.

First, who determines whether or not a particular transaction "can" immediately comply with the IDR Requirement – is it (i) the relevant energy, mining or O&G company undertaking the particular transaction, (ii) ESDM or (iii) BI? The writer's tentative present understanding is that what is envisaged is a form of "self-assessment" such that it is the relevant energy, mining or O&G company, undertaking the particular transaction, which makes the determination. In the case of O&G companies at least, this has been substantially confirmed by SKK Migas.

Second, what does "can" mean? The reality is almost certainly that all transactions undertaken by energy, mining and O&G companies "can" immediately comply with the IDR Requirement in the sense that it is technically possible to immediately comply with the IDR Requirement if the associated costs and consequences, of such immediate compliance, are disregarded. Presumably, however, "can" is intended to imply a focus on the practical considerations associated with immediate compliance such that, if the associated costs and consequences are excessive or unreasonable in some way, then immediate compliance is deemed to be not possible.

Third, given Category 1 Transactions "can", from a practical perspective, immediately comply with the IDR Requirement, why is it appropriate or necessary to give the relevant energy, mining and O&G companies an additional six months to so comply?

3.3 **Category 2 Transactions**: Transactions undertaken by energy, mining and O&G companies, and which transactions still need "some time" to comply with the IDR Requirement, are classified as "Category 2 Transactions".

Energy, mining and O&G companies are, apparently, to be given an open ended "transition" period (**i.e.**, of indefinite duration) to comply with the IDR Requirement in the case of Category 2 Transactions subject to the "possibility of changing" the relevant "agreement".

There are a number of obvious issues in respect of Category 2 Transactions.

First, who determines (i) whether or not a particular transaction still needs "some time" to comply with the IDR Requirement and (ii) how much time is "some time" – is it (i) the relevant energy, mining or O&G company undertaking the particular transaction, (ii) ESDM or (iii) BI? As with Category 1 Transactions, "self-assessment" seems to be what is intended here.

Second, what is meant by the reference to the "possibility of changing" the relevant "agreement"? The writer finds it almost impossible to make any real sense of these references although a number of alternatives suggest themselves. Is the intention that the relevant energy, mining or O&G company may be given some right to unilaterally amend the subject agreement so as to make it easier to comply with the IDR Requirement? Alternatively, is the intention to actually impose some obligation on the relevant energy, mining or O&G company to negotiate, in good faith, with its counterparty in an endeavor to agree amendments to the subject agreement, which amendments will facilitate compliance with the IDR Requirement? Based on feedback the writer's staff has obtained from BI, however, it seems that what may actually be

intended is to highlight the possibility of changing the in-principal agreement that has supposedly been reached between ESDM and BI regarding the application of the IDR Requirement to energy, mining and O&G companies as reflected in the ESDM Press Release. If this is correct, then it is not clear to the writer why this possibility is only referred to in the case of Category 2 Transactions.

3.4 **Category 3 Transactions**: Transactions undertaken by energy, mining and O&G companies and in respect of which transactions it is "fundamentally" hard to comply with the IDR Requirement, due to "certain factors" such as Government regulation, are classified as "Category 3 Transactions".

The relevant energy, mining and O&G companies are allowed to continue using foreign currencies, in respect of Category 3 Transactions and, otherwise, apparently exempt altogether from compliance with the IDR Requirement.

There are a number of obvious issues in respect of Category 3 Transactions.

First, what is meant by "fundamentally hard to comply with the IDR Requirement"? The citing of "Government regulation" as a reason why it may be "fundamentally hard" to comply with the IDR Requirement could indicate that transactions are only to be classified as Category 3 Transactions when the use of IDR is prohibited by law (**i.e.**, legal impossibility) such as where a particular law or regulation specifies that a transaction must be in USD. Confining Category 3 Transactions to situations of legal impossibility is, however, very limiting.

Second, who determines that it is "fundamentally hard to comply with the IDR Requirement" - (i) the relevant energy, mining or O&G company undertaking the particular transaction, (ii) ESDM or (iii) BI? Although it may be that, as with Category 1 Transactions and Category 2 Transactions, "self-assessment" is what is intended here, self-assessment is, arguably, not appropriate if the correct definition, of the concept of "fundamentally hard to comply with the IDR Requirement", is legal impossibility. This is because legal impossibility does not involve any commercial assessment but, rather, is a question of the proper interpretation of the relevant law or regulation, something which no energy, mining or O&G company is qualified to undertake.

3.5 **Assessment**: The ESDM Press Release purports to record the terms of an agreement supposedly reached between ESDM and BI in respect of how the IDR Requirement will be applied to energy, mining and O&G companies. Somewhat typically, however, there now seems to be uncertainty as to just what was agreed between ESDM and BI. At the Socialization Seminar, the BI representative indicated BI ever only agreed to special treatment for O&G companies but **not** for energy and mining companies. According to the BI representative, the special treatment BI has agreed to, for O&G companies only, was the result of an application submitted by SKK Migas, pursuant to Article 16 of BIR 17/2005, for a Case by Case Exemption on behalf of O&G companies operating in Indonesia. The ESDM Press Release, however, draws no distinction between O&G companies on the one hand and energy and mining companies on the other hand. Rather, the ESDM Press Release indicates the same special treatment will be applied to energy and mining companies as well as to O&G

companies. The BI representative, at the Socialization Seminar, appeared to take the position that, if ESDM wanted its existing agreement with BI, regarding O&G companies, to also apply to energy and mining companies, then ESDM would need to make special application for a Case by Case Exemption covering energy and mining companies just as SKK Migas has previously done in respect of O&G companies. This, of course, leads to the interesting issue of whether or not Article 16 of BIR 17/2015 really envisages (i) "blanket" Case by Case Exemptions for **all** companies operating in a particular industry or (ii) Case by Case Exemptions being applied for by a governmental authority rather than by individual companies adversely affected by the IDR Requirement – after all, individual applications by affected parties only seem to be what is actually envisaged by Article 16 of BIR 17/2015.

Many energy and mining companies seem to be proceeding on the assumption that the issuance of the ESDM Press Release means that the special treatment contemplated by the ESDM Press Release is already in effect and that, accordingly, they now have a minimum of an additional six months to comply with the IDR Requirement. This, however, may well **not** be correct for the reason outlined in the previous paragraph. Although O&G companies have, apparently, been granted a Case by Case Exemption, as a result of an application made by SKK Migas to BI on behalf of all O&G companies, BI is presently denying that any such Case by Case Exemption has been granted or even applied for, by ESDM, on behalf of energy and mining companies.

It should also be borne in mind that the ESDM Press Release is only a press release and has **no** legal effect as such. Extensive enquiries and discussions with BI indicate BI's position to be that, until such time as either (i) a Case by Case Exemption is granted for energy and mining companies (either individually or on a collective basis) or (ii) BIR 17/2015 is amended and reissued incorporating the relief for energy and mining companies (as well as for O&G companies) contemplated by the ESDM Press Release, energy and mining companies (but not O&G companies) still have to strictly comply with the IDR Requirement on the basis set out in BIR 17/2015 in its current form.

While BI's position is technically correct as a matter of legal analysis, it seems to make very little sense from a practical perspective. This is because it means that individual energy and mining companies must (i) individually apply for and obtain Case by Case Exemptions, (ii) have ESDM make an application, on behalf of all energy and mining companies, to BI for a Case by Case Exemption or (iii) incur the considerable cost and inconvenience of changing their existing business and payment systems to immediately comply with the IDR Requirement notwithstanding that, if and when BIR 17/2015 is amended and reissued so as to incorporate the relief contemplated by the ESDM Press Release, they will, as a minimum, have an additional six months to comply with the IDR requirement and, in the case of Category 2 Transactions and Category 3 Transactions be exempted indefinitely from compliance with the IDR Requirement.

Presumably, most medium and large energy and mining companies (especially those that are listed public companies) will, if they have not already done so, opt to apply for Case by Case Exemptions in the expectation (or, more realistically, the hope) that BI will be very generous in granting Case by Case Exemptions to energy and mining companies (as well as for O&G

companies) given the existence of the ESDM Press Release and even if BI presently does not acknowledge it has agreed to any special treatment for energy and mining companies as opposed to for O&G companies. This hope, though, may be misplaced given the quite stringent requirements for Case by Case Exemptions as outlined in Part 1.3 above.

Many smaller energy and mining companies are, likely, going to be reluctant to spend the time and money involved in applying for Case by Case Exemptions and proceed, instead, on the basis of ignoring the IDR Requirement in the expectation that BI will not rigorously enforce the IDR Requirement, in the case of energy and mining companies, given the existence of the ESDM Press Release and their anticipation that, regardless of what BI may be currently saying, either (i) BIR 17/2015 will be, eventually, amended and reissued incorporating the relief, contemplated by the ESDM Press Release, for energy and mining companies or (ii) ESDM will succeed in obtaining some sort of "blanket" Case by Case Exemption for energy and mining companies similar to that apparently already obtained by SKK Migas for O&G companies. While this may be a reasonable business approach, it does expose such energy and mining companies to the risk of imposition of the various administrative sanctions contemplated by BIR 17/2015 for non-compliance with the IDR Requirement. Given common sense is not a well known and widely found characteristic of Indonesian government institutions, including BI, this risk could be more significant than might otherwise appear to be the case.

4. **Implications for Policy Making, Regulation Issuance and Inter-Ministry Coordination**

The special treatment promised in the ESDM Press Release, for energy, mining and O&G companies re compliance with the IDR Requirement, is certainty to be welcomed. This promised special treatment, presumably, reflects the importance the Government attributes to (i) increasing Indonesia's O&G production and (ii) generating much more tax revenue from the mining industry, than it has in the past, as a partial answer to the shortfall in the Government's revenue from the O&G industry as a result of the decline in oil prices. Given the extremely pressing nature of the Government's budgetary constraints, anything that may reduce O&G industry or mining industry activity is likely to be a matter of great concern to the Government in light of the negative Government revenue implications of such reduction in O&G industry and/or mining industry activity if it materializes. Readers interested in knowing more about these budgetary constraints and the likely implications of the same for law, policy and regulations in respect of the Indonesian mining industry are referred to the writer's earlier article *"Mining Policy Reform – Is GOI Willing to Pay the Price for More Revenue from the Mining Industry?"* which appeared in the April – May 2015 edition of Coal Asia Magazine.

Notwithstanding the foregoing, however, the handling of the IDR Requirement, and its application to energy, mining and O&G companies, should be seen as worthy of a "School of Government case study" in how **not** to make and implement government policy. The compliance problems and the potentially negative economic implications of the IDR Requirement were entirely foreseeable from the very beginning and should have been fully apparent to BI **before** BIR 17/2015 was issued on 31 March 2015. The fact that only three months after BIR 17/2015 was issued and, indeed, on the very day the IDR Requirement was to become effective, ESDM found it necessary to issue the Press Release and outline what seems to be a very substantial dilution of the IDR Requirement, as it will eventually apply to energy, mining and O&G companies, represents a major policy "u-turn" that would have been quite

unnecessary if only BI had diligently researched and consulted with industry regarding the likely implications of the IDR Requirement **before** BIR 17/2015 was finalized and issued.

The policy making failure inherent in the making and roll out of the IDR Requirement is not a one-off mistake nor is it a mistake confined to BI. Rather, it is almost the rule, rather than the exception, in Indonesia where policies and regulations are routinely made and issued "on the run", without the benefit of proper research and in the absence of any serious advance consultation with industry. The local energy, mining and O&G industries have, over the last few years, seen numerous examples of this hugely defective approach to policy making and the issuance of regulations. The metal minerals domestic processing and refining policy, with its unrealistic and poorly thought through minimum refining standards as well as the intermittent changes to how it is going to be implemented, is just one other particularly glaring example of the policy making and regulation issuance "vacuum" in Indonesia.

Although the mishandling of the IDR Requirement is to be regretted, it seems that now even the President himself understands how deficient is the whole policy making and regulation issuance process in Indonesia. Perhaps more importantly, it seems that the President also understands the inherent cost, to Indonesia, of such a deficient policy making and regulation issuance process in terms of the resulting investor uncertainty. According to a news item that appeared in The Jakarta Post on 9 July 2015 under the wonderful heading "*No more flip flops, Jokowi tells under-fire team*" and quoting Sri Adiningsih, the head of the President's Supreme Advisory Board, the President has recently informed his Ministers and other high State officials that:

> *"They [new policies] have to be comprehensive so that when policies are launched they don't have to be taken apart and put back together, all of which raises questions of uncertainty."*

Sri Adiningsih went on to say that:

> *"A change is needed with or without a [cabinet] reshuffle, in executing various existing programs and projects so that they can run more smoothly."*

Sri Adiningsih cited tax changes as an area particularly prone to policy "flip flops" in Indonesia. However, given the President's admonition of his Ministers and other high State officials, for their recurring policy "flip fops", came just six days after the ESDM Press Release, it can scarcely be doubted that the President was also feeling particularly vexed about the poor handling of the IDR Requirement and its application to energy, mining and O&G companies.

Further, the apparent inability of ESDM and BI to reach a consensus on what the ESDM Press Release indicates they have already agreed to, in the case of the application of the IDR Requirement to energy and mining companies (but not O&G companies), only serves to highlight the chronic lack of co-ordination between ministries and other governmental authorities in Indonesia with regard to the implementation of policy and where multiple ministries and governmental authorities must necessarily be involved. If it is the case that ESDM did not (i) send BI a draft of the Press Release **before** it was released by ESDM and (ii) request BI to confirm that the draft Press Release properly reflected BI's understanding of what had been agreed with ESDM, this is a worrying lapse in inter-ministry coordination. Were this not such a troubling issue, the confusion that is likely to be created by the

ESDM Press Release and the apparent differing interpretations of ESDM and BI as to what they have actually agreed, re the application of the IDR Requirement to energy and mining companies (but not O&G companies), would be almost comical.

SUMMARY AND CONCLUSIONS

BI and ESDM have been undeniably very active in trying to resolve the confusion and deal with the pushback regarding the IDR Requirement, particularly in respect of the application of the IDR Requirement to energy, mining and O&G companies.

ESDM's recent assurance that energy, mining and O&G companies will be accorded special treatment, when it comes to compliance with the IDR Requirement, is a move in the right direction.

The apparent lack of consensus, however, as to just what has been agreed between ESDM and BI regarding the need for energy and mining companies (as opposed to O&G companies) to fully comply with the IDR Requirement is going to give rise to a lot of uncertainty and, possibly, involve energy and mining companies in a great deal of wholly unnecessary cost and effort.

Just how the special treatment, promised by ESDM, to energy, mining and O&G companies will operate in practice also remains very unclear given the inadequate specification of the three different categories, of transactions undertaken by energy, mining and O&G companies, as identified in the ESDM Press Release.

Most energy, mining and O&G companies will, surely, share the President's evident frustration with the seemingly endless "flip flops" that characterize policy making and regulation issuance in Indonesia. It can scarcely be doubted the President must be equally frustrated by the poor co-ordination between ministries and governmental authorities as evidenced by ESDM and BI's very different interpretations of the ESDM Press Release and what has been, so far, agreed between them in respect of energy and mining company (but not O&G company) compliance with the IDR Requirement.

To the extent the mishandling of the IDR Requirement, and its application to energy, mining and O&G companies, ultimately leads to an improvement in policy making and regulation issuance (as well as to better implementation co-ordination between ministries and governmental authorities) in Indonesia, this will be a very positive development. Old habits are hard to change, however, and given poor policy making, ill-considered regulation issuance and lack of co-ordination have been the norm, in Indonesia and for a long time, it may take a lot more than a one-off "dressing down" by the President to get Ministers and senior State officials to change their ways in this regard. Accordingly, it is hard to believe the recurring policy "flip flops" and co-ordination missteps will become a thing of the past, in Indonesia, any time soon.

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