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EXPLOITING INDONESIA'S SEABED MINERALS – TWO DIFFERENT REGULATORY REGIMES

INTRODUCTION

The Government has recently announced the determination of seven new locations in which so-called "sea sand mining" may take place.

The recent announcement follows important regulatory changes last year that make possible the legal resumption of Indonesian sea sand exports for the first time since 2003.

Although colloquially referred to in the popular press as "sea sand mining", sea sand exploitation activities, in the newly determined locations, are not being regulated as a traditional mining activity as such. Instead, sea sand exploitation is being regulated as part of the management of marine sedimentation byproducts for the purpose of marine ecosystem/environment protection.

Given that Indonesia already has a well-established regulatory regime for seabed metal mineral and coal exploration/production operation activities, there is clearly potential for conflict and confusion between what are now two distinct regulatory regimes for the exploitation of Indonesia's seabed mineral resources.

Environmental groups and support organizations for local fishermen have also expressed considerable reservations about any expansion of permitted sea sand exploitation activities and, more particularly, the possible resumption of sea sand exports given the unfortunate history of Indonesian sea sand export activities.

In this article, the writer will review and contrast the two very different regulatory regimes that now exist for seabed metal mineral/coal mining and sea sand mining as well as the overlaps between the two regulatory regimes.

BACKGROUND

Until 2003, Indonesia was a major exporter of sea sand to Singapore and other neighboring countries where it was extensively used in connection with land reclamation and other construction activities.

The alleged environmental damage caused by wide-spread and substantially uncontrolled sea sand exploitation became a matter of growing concern among the Indonesian public and non-government organizations (**NGOs**) active in Indonesia. This followed alarming reports, in the popular media, of some remote and low-lying Indonesian islands largely disappearing altogether as a result of sea sand exploitation.

In 2003 and in an endeavor to (i) prevent further environmental damage, (ii) reorganize the use and export of sea sand and (ii) finally settle the maritime boundary between Indonesia and Singapore, the Government banned the further export of sea sand pursuant to Decree of the Minister of Industry

and Trade (**MoIT**) No. 117/MPP/KEP/2/2003 of 2003 re the Temporary Cessation of Marine Sand Exports dated 28 February 2003 (**MoIT Decree 117/2003**).

MoIT Decree 117/2003 allowed for the possibility of a resumption of legal sea sand export activity following (i) the development of a program to prevent damage to Indonesia's coastal areas and small islands and (ii) settlement of the maritime boundary between Indonesia and Singapore. However, there was no actual resumption of **legal** sea sand export activity.

The ban on sea sand exports was subsequently reaffirmed by Minister of Trade (**MoT**) Regulation No. 2 of 2007 re Export Ban on Sand, Soil and Topsoil (**MoT Regulation 2/2007**).

Last year, Government Regulation No. 26 of 2023 re the Management of Marine Sedimentation Byproducts (**GR 26/2023**) was issued for the **stated** purpose of managing marine sedimentation so as to protect and preserve the marine environment and marine ecosystem.

In order to implement the provisions of GR 26/2023, the Minister of Marine Affairs and Fisheries (**MoMAF**) subsequently issued MoMAF Regulation No. 33 of 2023 re the Implementation of GR No. 26/2023 (**MoMAF Regulation 33/2023**).

Following the evaluation of various maritime areas, as provided for in MoMAF Regulation 33/2023, MoMAF has now issued Decree No. 16 of 2024 re Planning Documents for the Management of Marine Sedimentation Byproducts (**MoMAF Decree 16/2024**).

MoMAF Decree 16/2024 identifies (i) five areas in the Java Sea surrounding Demak Regency, Surabaya City, Cirebon Regency, Indramayu Regency and Karawang Regency, (ii) part of the Makassar Strait and (iii) part of the Natuna – North Natuna Sea as being available for marine sedimentation "cleaning" and utilization by approved applicants following the grant of necessary permits.

According to the 1 April 2024 edition of Tempo Magazine, the five areas identified by MoMAF Decree 16/2024 cover 588,000 hectares in total and are estimated to contain as much as 17.94 billion cubic meters of marine sediment including sea sand.

Notwithstanding the recent focus of the popular media on sea sand mining, the potential for greatly expanded seabed mining of metal minerals is arguably much more important to the economic future of Indonesia. The search for so-called "critical minerals" (many of which are metal minerals such as copper, nickel and tin), required for the manufacture of electric batteries, wiring and other important elements of green energy technology, is increasingly turning to the seabed.

ANALYSIS AND DISCUSSION

1. Overview of Indonesia's Seabed Mining Regulatory Regimes

Indonesia is a so-called "archipelagic state" (**i.e.**, a state made up of multiple islands) and is, indeed, the world's largest archipelagic state, with more than 18,000 islands. According to the Ministry of Maritime Affairs & Investment, as much as 62% of the territory over which Indonesia claims sovereignty comprises sea areas.

International law recognizes that Indonesia has sovereignty over its so-called "territorial waters" which comprise (i) "internal waters" (**i.e.**, lakes and rivers), (ii) "territorial sea" (**i.e.**, the sea areas immediately adjacent to land areas and up to a maximum of 12 nautical miles offshore) and (iii) "archipelagic waters" (**i.e.**, sea areas of whatever distance and depth between individual islands forming part of the Indonesian archipelago) (Articles 2, 3, 8 and 47 of the 1982 United Nations Convention on the Law of the Sea (**UNCLOS**)). Indonesia's sovereignty over its territorial waters extends to the seabed under those territorial waters as well as to the minerals and other resources found in those territorial waters and seabed. Indonesia has taken steps to regulate mining activities in respect of the seabed under its territorial waters.

While UNCLOS also recognizes that Indonesia has certain mineral exploitation rights in respect of seabed areas extending beyond its territorial waters (**i.e.**, the contiguous zone, the exclusive economic zone and the continental shelf), Indonesia has, to date, **not** taken any steps to regulate mining activities in respect of these extended seabed areas. However, the possibility of such steps being taken in the future is clearly contemplated by Law No. 32 of 2014 re Marine Affairs as lastly amended by Law No. 6 of 2023 re Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (**Job Creation Law**) (**Sea Law**).

In order to understand why and how Indonesia regulates the exploitation of mineral resources in the seabed under its territorial waters, it is necessary to have regard to (i) the 1945 Constitution, (ii) the Sea Law, (iii) Law Number 4 Year 2009 re Minerals and Coal Mining as lastly amended by the Job Creation Law (**Mining Law**), (iv) GR 26/2023, (v) MoMAF Regulation 33/2023 and (vi) MoMAF Decree 16/2024.

The 1945 Constitution provides that Indonesia's land, "**waters**" (**i.e.**, Indonesia's territorial waters and the seabed under those territorial waters) and the natural resources (**eg**, minerals) found therein are to be used for the welfare of the Indonesian people (Article 33(3) of the 1945 Constitution). The Sea Law, the Mining Law (and, more particularly, the 2020 amendments to the Mining Law), GR 26/2023, MoMAF Regulation 33/2023 and MoMAF Decree 16/2024 are all examples of laws and regulations, dealing with specific aspects of the exploitation of Indonesia's seabed mineral resources, made or issued in reliance upon Article 33(3) of the 1945 Constitution.

2. Seabed Mining Pursuant to the Mining Law

The 2020 amendments to the Mining Law include a new definition of "Mining Jurisdiction" which expressly includes Indonesia's territorial waters and the seabed under Indonesia's territorial waters (Article 1(28a) of the Mining Law).

The Mining Law contemplates that mining business license areas (**WIUPs**), **for metal minerals and coal only**, may be declared/determined in Indonesia's territorial waters (Article 17(2) of the Mining Law).

Mining business licenses (**IUPs**) for tin (as well as **possibly** for other metal minerals and coal) have been issued in respect of WIUPs covering parts of Indonesia's territorial sea and,

possibly, parts of Indonesia's archipelagic waters. PT Timah Tbk is understood to have IUPs for tin covering seabed WIUP areas in Bangka-Belitung Regency.

In addition to an IUP, a party wanting to carry out seabed metal mineral or coal mining must obtain approval/recognition of Marine Spatial Utilization Conformity (**KKPRL**) via an application submitted through the so-called "Online Single Submission System" (**OSS System**) (Article 47 of the Sea Law). KKPRLs are only issued following assessment and inspection by the Directorate of Marine Spatial Planning, which process is intended to ensure that the proposed seabed mining activities (i) do not damage the marine environment, (ii) take into account the need to preserve other natural resources found in the relevant marine environment and (iii) comply with other applicable laws and regulations.

The Mining Law does **not** deal with **seabed** mining activities in respect of non-metal minerals or rocks, including sea sand.

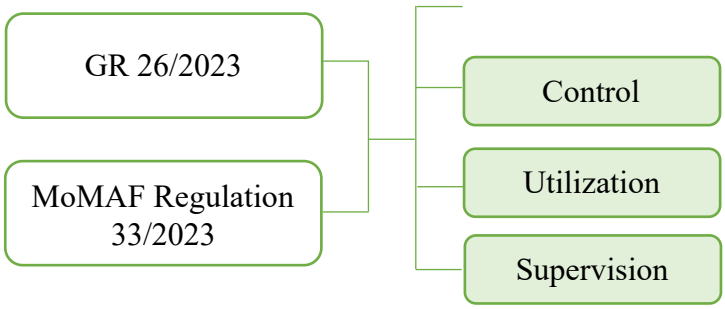
Enquiries made with the Ministry of Energy & Mineral Resources (**ESDM**) indicate that ESDM (i) does **not** regard sea sand (at least to the extent that it is found beneath Indonesia's territorial waters) as being a mineral in respect of which it has or claims to have authority to administer/regulate associated mining business activities and (ii) accepts that it is the Ministry of Marine Affairs & Fisheries which has the authority to regulate sea sand exploitation (**i.e.**, sea sand "mining" as it is referred to in the popular press), at least to the extent that the sea sand is found beneath Indonesia's territorial waters.

For Indonesian regulatory purposes then and **subject to two intriguing issues which are highlighted in Part 4 below**, sea sand "mining" is, in fact, **not** regarded by ESDM as being a mining activity at all and, therefore, supposedly does **not** fall within the authority of ESDM to administer and regulate, at least to the extent that the sea sand is found beneath Indonesia's territorial waters. Accordingly, for the purposes of the rest of this article, the writer will use the expression "sea sand exploitation", rather than the expression "sea sand mining", in explaining how Indonesia regulates sea sand business activities, which include the potential export of sea sand, in the case of sea sand found beneath Indonesia's territorial waters.

3. Sea Sand Exploitation pursuant to GR 26/2023, MoMAF Regulation 33/2023 and MoMAF Decree 16/2024

3.1 **Preliminary Remarks:** The new regulatory environment for sea sand exploitation is concerned with the "management" of "marine sedimentation byproducts" (**Marine Sediment**).

The management of Marine Sediment covers (i) planning, (ii) control, (iii) **utilization** and (iv) supervision activities in respect of Marine Sediment (**Marine Sediment Management**) (Article 4 of GR 26/2023 and Article 4 of MoMAF Regulation 33/2023). In schematic form, this may be shown as follows:



Various parts of Indonesia's territorial waters are expressly **excluded** from the scope of Marine Sediment Management, being (i) "working environment areas", (ii) "port interest environment areas", (iii) special terminals, (iv) **WIUPs**, (v) shipping lanes and (vi) designated conservation areas other than conservation management areas (Article 3 of GR 26/2023 and Article 3 of MoMAF Regulation 33/2023).

Marine Sediment Management is to be carried out for the purpose of what is **said to be** "*the protection and promotion of the marine environment in order to support the maintenance of the carrying capacity of coastal marine ecosystems"* and "*improving ocean health*" by way of "*controlling the natural processes that interfere with the management of marine resources*" (Recitals to and Elucidation of GR 26/2023 and Article 2 of MoMAF Regulation 33/2023).

Taken at face value only, the wording of GR 26/2023 and MoMAF Regulation 33/2023 might suggest that the potential availability of Marine Sediment for commercial use and possible export is just an ancillary consequence of necessary action that must be taken, in designated areas, to protect the marine environment and improve ocean health. However, a cynical observer might wonder if the **actual** objective/purpose of GR 26/2023 and MoMAF Regulation 33/2023 is less about protecting/promoting the marine environment/improving ocean health and more about creating a justification for the resumption of commercial sea sand exploitation under the guise of protecting/promoting the marine environment and improving ocean health. In this regard, it is hard to believe that the drafters of GR 26/2023 and MoMAF Regulation 33/2023 were not very mindful of and extremely anxious to avoid a repeat of the public controversy that surrounded the pre-2003 wide-spread and substantially uncontrolled exploitation of Indonesian sea sand for private sector commercial benefit.

An article in the 1 April 2024 issue of Tempo Magazine, titled "*Sea Sand Demand for Construction Projects in Batam*", highlights (i) the supposed need for large quantities of sea sand to be used in connection with major construction projects in and around Batam City, (ii) the insufficiency of available land-based sea sand and (iii) the high cost and logistical issues associated with relying on sea sand from sources that are not close by. If correct, it would not be surprising to find domestic construction companies and property developers actively lobbying for a resumption of sea sand mining in order to support their businesses. With this in mind, a cynical observer may question which actually came first – the environmental "chicken" (in the form of the supposed need for more pro-active Marine Sediment Management in order to protect and preserve the marine eco-system/marine environment) or the commercial "egg" (in the form of growing domestic construction industry demand for large quantities of sea sand)!!!

3.2 **Marine Sediment:** Marine Sediment covers more than just sea sand. More particularly, Marine Sediment comprises (i) sediments in the sea, (ii) in the form of natural materials, (iii) formed through corrosion and erosion processes, (iv) distributed by oceanographic dynamics and precipitation and (v) that can be retrieved to prevent ecosystem damage and shipping disruption (Article 1(1) of GR 26/2023 and Article 1(1) of MoMAF Regulation 33/2023). Marine Sediment actually comprises (i) **sea sand** and (ii) "*other sedimentary materials in the form of **mud***" (Article 9 of GR 26/2023 and Article 9(2) of MoMAF Regulation 33/2023).

Notwithstanding the expansive concept of Marine Sediment, it is the exploitation of sea sand alone that has received substantially all the attention and coverage in the popular press.

3.3 **Marine Sediment Planning:** Marine Sediment "*planning*" is concerned with (i) determining/identifying priority locations where action needs to be taken in respect of excess Marine Sediment as well as the type and volume of excess Marine Sediment in those priority locations, (ii) the likely environmental impact in the priority locations if action is not taken in respect of excess Marine Sediment, (iii) the action that should be taken to control excess Marine Sediment in the priority locations, (iv) how excess Marine Sediment removed from priority locations should be utilized and (v) developing a strategy for the rehabilitation of coastal and marine ecosystems (Chapter II of GR 26/2023 and Chapter II of MoMAF Regulation 33/2023).

MoMAF Decree 16/2024 and the seven priority areas identified by it, as requiring action to be taken in respect of the excess Marine Sediment that has accumulated in those priority areas, represent the outcome of at least items (i), (ii) and (iii) of the Marine Sediment planning process as initially undertaken following the issuance of MoMAF Regulation 33/2023.

3.4 **Marine Sediment Control:** Marine Sediment "*control*" is the action taken/to be taken, in the form of so-called "*cleaning*", to reduce or remove excess accumulated Marine Sediment in a designated/determined priority area so as to ensure that the "*supporting capacity*" and the "*carrying capacity*" of relevant coastal marine ecosystem are not adversely effected (Chapter III of GR 26/2023 and Article 1(3) and Chapter III of MoMAF Regulation 33/2023).

The reduction or removal (**i.e.**, "*cleaning*") of excess Marine Sediment is to be carried out by special purpose, sea-going vessels that (i) employ technology enabling the "*suctioning up*" of Marine Sediment and (ii) meet a number of specified technical criteria (Article 8 of GR 26/2023 and Article 18 of MoMAF Regulation 33/2023).

Marine Sediment reduction or removal will use substantially the same suction technology that is, currently, used for offshore tin mining in Bangka-Belitung Regency and elsewhere outside of Indonesia.

Marine Sediment Utilization: "*Utilization*" of Marine Sediment involves a series of business activities comprising Marine Sediment (i) transportation, (ii) "*placement*" (**i.e.**, stockpiling/storage of Marine Sediment), (iii) use and/or (iv) **sale** (Chapter IV of GR 26/2023 and Chapter IV of MoMAF Regulation 33/2023).

The permitted utilization of excess Marine Sediment, removed/reduced as part of Marine Sediment Management control action taken, varies depending upon whether the Marine Sediment in question is sea sand or mud.

Sea sand may be utilized for the purpose of (i) domestic reclamation, (ii) development of government infrastructure, (iii) development of infrastructure by business actors and (iv) subject to prioritizing the satisfaction of domestic demand (**DM Obligation**) and compliance with applicable laws and regulations, **export** (Article 9(2) of GR 26/2023).

Mud, on the other hand, may only be utilized for rehabilitation of marine-coastal ecosystems (Article 9 of GR 26/2023 and Article 19 of MoMAF Regulation 33/2023). Mud **cannot** be exported.

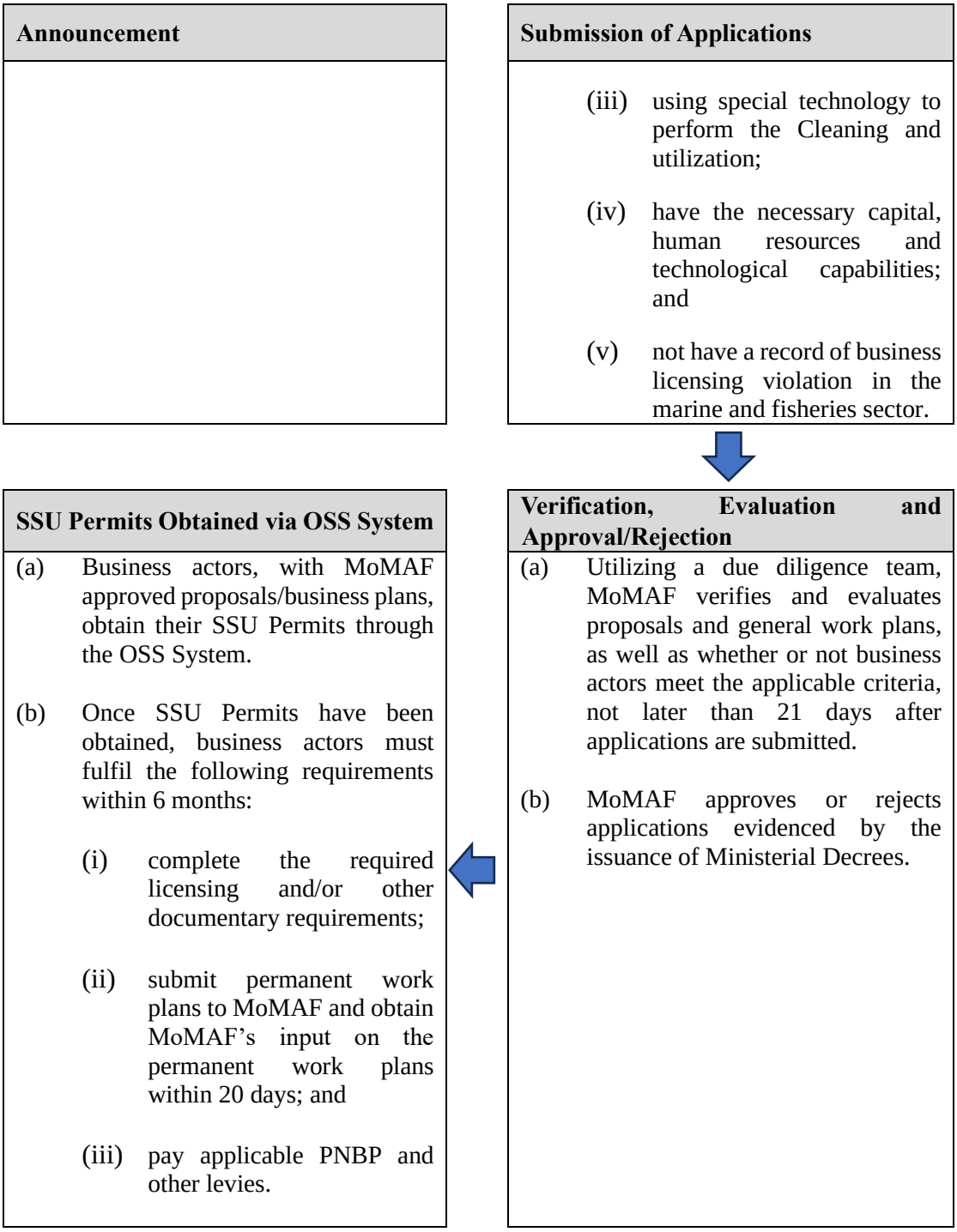
The export of sea sand requires (i) a recommendation from MoMAF, (ii) an export activities business license from MoT and (iii) the payment of applicable export duties (Article 15(3) and (4) of GR 26/2023 and Article 25 of MoMAF Regulation 33/2023).

The imposition of a DM Obligation in respect of sea sand is clearly intended to "mirror" similar existing or proposed DM Obligations in the coal mining industry and the renewable energy industry. At the same time, the inclusion of a DM Obligation in respect of sea sand may be intended to reduce likely public controversy over the possible resumption of sea sand exports. If this is correct, then the Government may well have failed to fully understand that that the pre-2003 controversy over sea sand mining and export was **not** really about unfulfilled domestic demand for sea sand at all but, rather, was much more about environmental concerns and general public/NGO unease concerning the gradual disappearance of low lying Indonesian islands as a result of widespread and substantially uncontrolled sea sand "mining". Likewise, and for the same reason, the imposition of significant recommendation, licensing and export duty requirements, that have to be met by would-be exporters of sea sand, may do little to reduce public and NGO concerns about a possible resumption of sea sand exports.

3.5 **Sea Sand Utilization Permits:** A so-called "*sea sand utilization permit*" must be obtained and maintained by business actors wanting to carry out (i) control/"*cleaning*" activities and/or (ii) utilization activities (**SSU Permit**) (Articles 16 to 20 of GR 26/2023 and Articles 26 to 30 of MoMAF Regulation 33/2023).

The availability of and the process of obtaining SSU Permits may be summarized as follows:

Announcement		**Submission of Applications**
(a) MoMAF announces the determination/distribution of priority locations and the estimated volume of Marine Sediment in each location, as set out in a planning document, through electronic and/or printed media. (b) The announcement is made not later than 14 days after the planning document is issued.	→	(a) Business actors submit applications for SSU Permits together with proposals and general work plans. (b) Business actors must meet the following requirements: (i) be willing to engage in "*cleaning*" and utilization activities; (ii) through a limited liability company, established in Indonesia;



It is particularly notable that SSU Permit holders are required to pay the non-tax state revenue or "production royalty" (**PNBP**), due in respect of the volume of Marine Sediment they are authorized to "*clean*" and utilize in a particular priority location, **before** they actually start to carry out their permanent work plans. Accordingly, SSU Permit holders bear the considerable risk that the volume of Marine Sediment they are actually able to "*clean*" and utilize may, for whatever reason, be less than the volume of Marine Sediment they authorized to "*clean*" and utilize.

The expression "***sea sand utilization*** *permit*" in both GR 26/2023 and MoMAF Regulation 33/2023 is somewhat confusing for at least two reasons. First, the use of the words "***sea sand***",

rather than the words "***Marine Sediment***" might imply that a SSU Permit is only required for activities in respect of sea sand but not for activities in respect of mud. Second, the use of the word "***utilization***" rather than the words "***cleaning and utilization***" might imply that it is only the carrying out of utilization activities, but not the carrying out of control/"*cleaning*" activities, that requires a SSU Permit.

Enquiries, however, made with the Ministry of Marine Affairs & Fisheries indicate that, notwithstanding the use of the expression *"sea sand utilization permit*", an SSU Permit is required for **all** *"cleaning*" **and** utilization activities in respect of **both** sea sand **and** mud.

3.6 **Reporting and Monitoring:** Holders of SSU Permits are required to submit quarterly reports to MoMAF on their activities, which reports are meant to be monitored and evaluated by MoMAF or an "*appointed official*" to whom the task is delegated by MoMAF.

Monitoring and evaluation of the activities of SSU Permit holders take the form of checking and confirming that the (i) activities of SSU Permit holders comply with the terms of their SSU Permits and (ii) Marine Sediment "*cleaning*" and utilization volume data, included in the quarterly reports of SSU Permit holders, is correct. This involves (i) preparation for field visits, (ii) field visits, (iii) co-ordination meetings and (iv) reporting and recommendations (Chapter V of GR 26/2023 and Chapter V of MoMAF Regulation 33/2023).

3.7 **Marine Sediment Supervision:** Supervision of the activities of SSU Permit holders is to be carried out by the Ministry of Maritime Affairs & Fisheries (i) as and when necessary and (ii) otherwise not less than twice a year.

The purpose of supervision is to ensure compliance by SSU Permit holders with the terms of their SSU Permits and, more generally, for the purpose of maintaining/promoting and protecting (i) the carrying capacity of coastal and marine ecosystems, (ii) shipping lanes and (iii) the socio-economic interests of the community (Chapter VI of GR 26/2023).

3.8 **Administrative Sanctions:** Business actors, which fail to comply with certain specified provisions of GR 26/2023 and MoMAF Regulation 33/2023, may be imposed with administrative sanctions in the form of (i) warnings, (ii) temporary suspension of business activities, (iii) revocation of their SSU Permits, (iv) permanent suspension of business activities and (v) fines (Chapter VII of GR 26/2023).

4. Inconsistencies and Overlaps between Mining Regulatory Regime and Marine Sediment Management Regulatory Regime

4.1 **Sea Sand is a Rock Mineral:** Notwithstanding the apparent position of ESDM disclaiming any authority to administer/regulate sea sand exploitation, sea sand is actually a so-called "*rock mineral*" and is expressly classified as such (Article 2 of Government Regulation No. 96 of 2021 re the Implementation of Mineral and Coal Mining Business Activities (**GR 96/2021**)).

A business actor wanting to carry out rock mining must, first, **obtain a "*mining license for rocks***" (**SIPB**). SIPBs are issued by **MoEMR** but only to (i) regional-owned enterprises or BUMDs, (ii) private business entities for domestic investment purposes (**i.e.**, Non-PMA

Companies), (iii) cooperatives and (iv) sole proprietorships but **not** to (v) foreign investment companies (**i.e.**, PMA Companies) (Article 129 of GR 96/2021).

Given the above, it is **not** easy to reconcile (i) GR 96/2021's requirement that, as a "*rock mineral*", sea sand exploitation/mining requires an SIPB issued by MoEMR and (ii) GR 26/2023/MoMAF Regulation 33/2023's requirement that, as part of Marine Sedimentation, sea sand exploitation/mining requires an SSU Permit issued by MoMAF. The most plausible reconciliation is that GR 96/2021 is intended to deal with sea sand exploitation/mining **on land** while GR 26/2023 and MoMAF Regulation 33/2023 are intended to deal with sea sand exploitation/mining **under the sea** (**i.e.**, beneath Indonesia's territorial waters).

4.2 **Mining Business License Required for Sea Sand Sale:** Business actors wanting to sell sea sand found beneath Indonesia's territorial waters (but **not** mud) are required to have a "***mining business license*** *for sales*", which license is to be obtained from **MoEMR** (Articles 10(3) and 10(4) of GR 26/2023 and Article 16(3)(c) of MoMAF Regulation 33/2023).

Requiring would-be sellers of sea sand, found beneath Indonesia's territorial waters, to obtain a "*mining business license for sales*" is surprising to say the least. This is because the existence of such a requirement seems quite inconsistent with the apparent intention behind GR 26/2023 and MoMAF Regulation 33/2023; namely, that the exploitation of sea sand (at least to the extent it is found beneath Indonesia's territorial waters) should **not** be regulated as a mining activity at all but, rather, as a Marine Sediment Management activity being carried out for the preservation/promotion/protection of the marine eco-system/marine environment. Further, if sea sand exploitation (at least to the extent that the relevant sea sand is found beneath Indonesia's territorial waters) is **not** a mining business activity that is administered/regulated by MoEMR and/or sea sand (at least to the extent that the sea sand is found beneath Indonesia's territorial waters) is **not** regarded by MoEMR as being a mineral over which it has any administrative/regulatory authority, what possible justification can there be to require would-be sellers of sea sand (in the case of the sea sand found beneath Indonesia's territorial waters) to obtain a **mining business** license for sales from **MoEMR**?

Although not entirely clear, it is **probably** the case that the required form of "*mining business license for sales*" is an IUP for Sales (Article 105 of the Mining Law). However, an IUP for Sales only enables the holder (which is otherwise **not** engaged in mining business activities) to carry out a **one-time** sale of minerals and/or coal which have been extracted by other parties. Does it make sense for a business actor, which wants to sell sea sand found beneath Indonesia's territorial waters, to have to get a **new** IUP for Sales **each** time it wants to sell sea sand from a **different** Marine Sediment priority location? Also, holders of IUPs for Sales are meant to be selling minerals and/or coal produced by another party. This will **not** be the case, however, if the business actor wanting to sell sea sand, found beneath Indonesia's territorial waters, is the same business actor which carried out the "*cleaning*" process that produced the sea sand which is available for utilization by way of sale.

SUMMARY & CONCLUSIONS

Indonesia now has two quite different regulatory regimes for seabed mining/mineral exploitation, depending upon whether the relevant business activity concerns metal minerals/coal or Marine Sediment and, more particularly, sea sand.

Seabed exploitation of metal minerals/coal is carried out under the administration of MoEMR and regulated as a mining business activity while **seabed** exploitation of Marine Sediment and, more particularly, of sea sand found beneath Indonesia's territorial waters is carried out **largely but not entirely** under the administration of MoMAF and regulated as a Marine Sediment Management activity.

Unfortunately, however, the use of entirely separate regulatory regimes for the exploitation of seabed metal minerals/coal and the exploitation of Marine Sediment is confusingly compromised by the inconsistent regulatory regime classifications of sea sand as both Marine Sediment and as a "*rock mineral*", the exploitation of which requires difference business licenses issued by different Ministers. To add to the confusion, **land-based** exploitation of sea sand continues to be administered by MoEMR as part of the regulation of mining business activities.

The justification for the use of different regulatory regimes in the case of the exploitation of seabed metal minerals/coal and in the case of the exploitation of Marine Sediment is, presumably, that (**at least as presented** by GR 26/2023 and MoMAF Regulation 33/2023) Marine Sediment Management is **not** being carried out for the primary purpose of commercial gain but, rather, the primary purpose of Marine Sediment Management is the preservation/promotion/protection of the marine ecosystem/marine environment in situations where they are otherwise threatened by the accumulation of excess Marine Sediment in designated priority locations. The commercial utilization of "*cleaned*" (**i.e.**, excess) Marine Sediment removed from priority locations is, **supposedly**, just an ancillary consequence of Marine Sediment Management. This is to be compared with the seabed exploitation of metal minerals/coal which is a purely commercial endeavor.

It will be interesting to see whether or not the Indonesian public and NGOs active in Indonesia come to the conclusion that allowing the resumption of sea sand exploitation and possible sea sand export for commercial gain (in the case of sea sand found beneath Indonesia's territorial waters) is, in fact, the real objective/purpose of GR 26/2023 and MoMAF Regulation 33/2023, albeit cleverly "disguised" as preservation/promotion/protection of the marine ecosystem/marine environment.

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