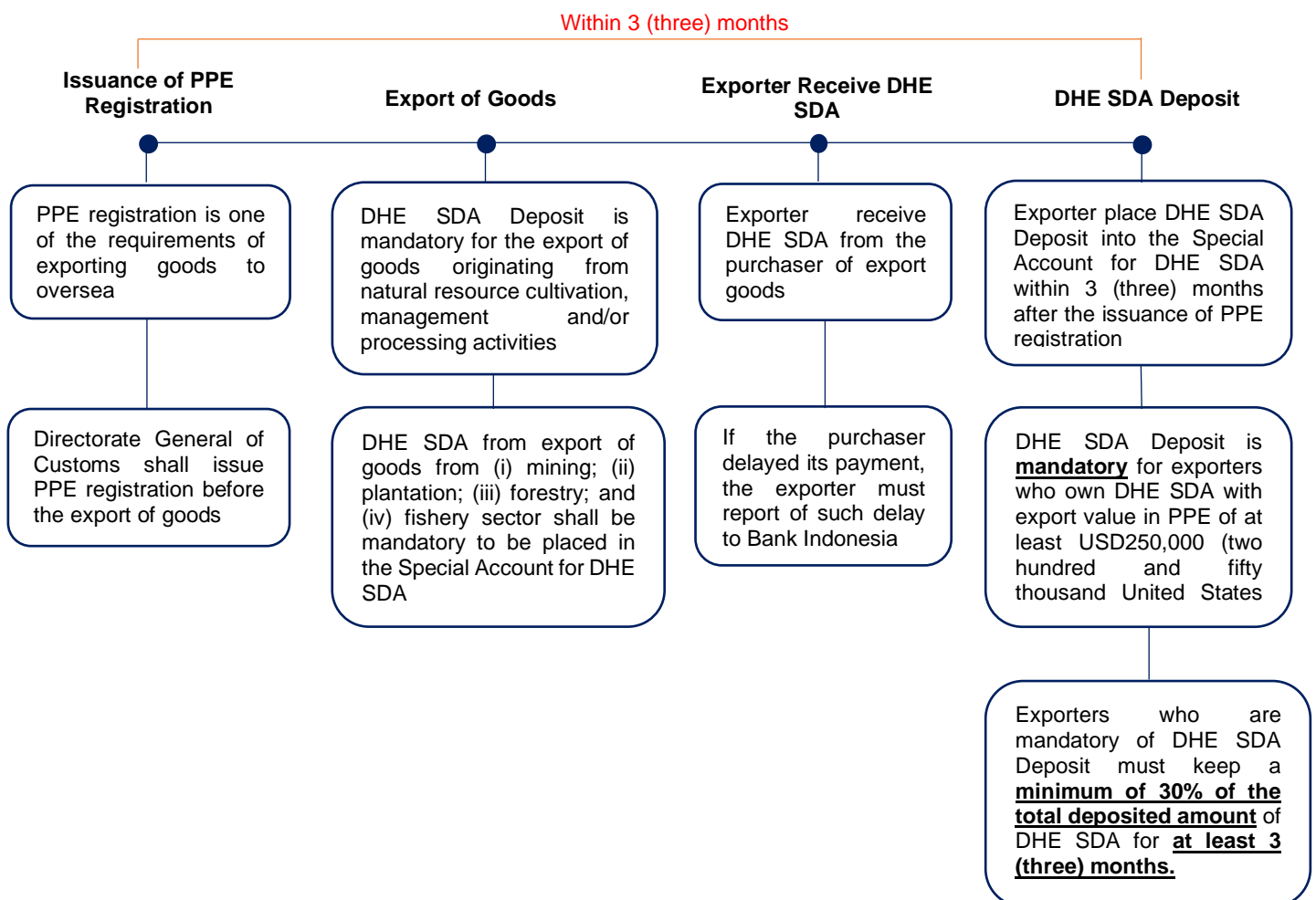


## New Policy of Deposit for Foreign Exchange Export Earnings from Natural Resources

On 1 August 2023, the Government of Republic of Indonesia enacted the new legal framework concerning the foreign exchange export earnings from natural resources by virtue of the Government Regulation No. 36 of 2023 on Foreign Exchange Export Earnings from Natural Resources from Businesses, Management and/or Processing of Natural Resources (“**GR 36/2023**”) which repealed and replaced the previous Government Regulation No. 1 of 2019 on Foreign Exchange Export Earnings from Natural Resources from Businesses, Management and/or Processing of Natural Resources. Further, Central Bank of Indonesia/*Bank Indonesia* also issued Bank Indonesia Regulation No. 7 of 2023 on Foreign Exchange Export Earnings and Foreign Exchange Import Earnings (“**BI Regulation 7/2023**”) as the implementing regulation of GR 36/2023.

In this case, we have highlighted several key points addressing the requirements of Foreign Exchange Export Earnings from Natural Resources (*Devisa Hasil Ekspor Sumber Daya Alam* – “**DHE SDA**”) Deposit brought by GR 36/2023 and BI Regulation 7/2023.



For ease of reference, in this Client Update, we have summarized the procedures of DHE SDA Deposit on the following timeline

## 1. What is DHE SDA Deposit?

DHE SDA Deposit is a deposit from any foreign exchange earnings from the export of goods originating from natural resource cultivation, management and/or processing activities. Pursuant to Article 5 and 6 (1) of GR 36/2023, exporter must deposit DHE SDA into the Special Account for DHE SDA in Indonesian Export Financing Agency and/or Bank (which conducts business activities in Foreign Exchange), that came from the export of goods in the following sectors:

- (i) mining;
- (ii) plantation;
- (iii) forestry; and
- (iv) fishery.

Further, Article 6 (3) of GR 36/2023 stipulates that the placement of DHE SDA Deposit into the Special Account for DHE SDA **must be implemented and/or completed within 3 (three) months** after the issuance of the Export Customs Notification (*Pemberitahuan Pabean Ekspor* – “PPE”) registration. Article 6 (1) and (3) of GR 36/2023 reads as follows:

*“Article 6 of GR 36/2023*

- (1) The obligation of Exporter to include DHE SDA into the Indonesian financial system as referred to in Article 5 paragraph (1) is conducted through the placement of DHE SDA into the Special Account for DHE SDA in:
  - a. Indonesian Export Financing Agency; and/or*
  - b. Bank which Conducts Business Activities in Foreign Exchange.**
- (2) ....*
- (3) The placement of DHE SDA in the Special Account for DHE SDA as referred to in paragraph (1) must be implemented by no later than the end of the third month after the month of PPE registration.”*

Nonetheless, it is worth noting that in the event the purchaser is in default, bankruptcy, or in a force majeure event, Article 4 of BI Regulation 7/2023 provides that the exporter must convey supporting documents to Bank Indonesia in order to proof of such events in order to delay or postpone the effective date of the DHE SDA Deposit.

In addition, should the payment for DHE SDA were previously conducted through an escrow account, exporter must create and transfer the escrow account to the Special Account for DHE SDA **by no later than 90 (ninety) days** since the enactment of GR 36/2023.

## 2. Which exporters are subject to the mandatory DHE SDA Deposit?

Pursuant to Article 6 (2) of GR 36/2023, the placement of DHE SDA Deposit is **mandatory** for exporters who own DHE SDA with export value in PPE of at least USD250,000 (two hundred and fifty thousand United States dollars). On the other hand, Article 17 of GR 36/2023 provides that exporters who own DHE SDA with export value in PPE of less than USD250.000 (two hundred and fifty thousand United States dollars) **may voluntarily** place their DHE SDA Deposit.

Further, Article 7 of GR 36/2023 requires exporters who are mandatory of DHE SDA Deposit to keep a **minimum of 30% of the total deposited amount** of DHE SDA for at least 3 (three) months after its deposit, reads as follows:

*“Article 7 of GR 36/2023*

- (1) For DHE SDA which has been included and placed by the Exporter into the Special Account for DHE SDA as referred to in Article 6, at least 30% (thirty percent) must remain in place in the Indonesian financial system for a certain period.*
- (2) The certain period as referred to in paragraph (1) shall be at least 3 (three) months after the placement in the Special Account for DHE SDA*
- (3) Provisions regarding the mandatory placement of DHE SDA as referred to in paragraph (1) shall be implemented in accordance with the provisions of Regulation of Bank Indonesia.”*

In that regard, BI Regulation 7/2023 further provides that the 30% of DHE SDA Deposit shall be kept within the Indonesian Financial System through the following instrument:

- a. Special Account for DHE SDA;
- b. Banking instrument in the form of Foreign Exchange;
- c. Foreign Exchange promissory note issued by the Indonesian Export Financing Agency;
- d. Conventional Open Market Operation Term Deposit in Foreign Exchange issued by Bank Indonesia; and/or
- e. Other instruments regulated by Bank Indonesia.

In relation to the above, Article 10 (2) of GR 36/2023 stipulates that exporters who place DHE SDA Deposit **shall be given with a tax incentive** for the interest of such deposit and exporters **may be determined as exporters of good reputation** in accordance with the provisions of laws and regulations.

### **3. What is the utilization of DHE SDA Deposit?**

Article 11 (1) of GR 36/2023 provides that the DHE SDA Deposit shall be used by the exporters for the payment of:

- a. Export duty and other levies in the Export sector;
- b. Loans;
- c. Imports;
- d. Profits/dividends; and/or
- e. Other purposes of investment as regulated in Article 8 of Law No. 25 of 2007 on Investment.

### **4. What are the sanctions if exporters do not place DHE SDA Deposit?**

The implementation of mandatory placement of DHE SDA Deposit is supervised by Bank Indonesia and the Financial Services Authority (*Otoritas Jasa Keuangan* – “**OJK**”) within an integrated information system provided and/or used collectively by the Ministry of Finance, Bank Indonesia, OJK, and/or other relevant institutions.

In the event that the result of the supervision finds that an exporter has fulfilled the following criteria:

- a. Does not place DHE SDA Deposit into the Special Account for DHE SDA;
- b. Does not deposit a minimum of 30% of DHE SDA for a minimum of three months; and/or
- c. Does not create or transfer the escrow account in the Special Account for DHE SDA.

Such exporter shall be subject to the imposition of administrative sanctions in the form of **suspension of export services** based on the laws and regulations on customs, through the Directorate General of Customs.

## Remarks

Following the issuance of GR 36/2023, there are certain new requirements that are brought by this regulation, namely (i) the requirements to keep a minimum of 30% of DHE SDA Deposit for 3 (three) months; and (ii) the provision stipulating which exporters are mandatory or non-mandatory of DHE SDA Deposit. In that regard, we believe that exporters must comply with the requirements stipulated in GR 36/2023, as failure to comply with such requirements may expose the exporters to suspension of export services which will definitely disrupt the course of the exporter's business activities.

\*\*\*

In the upcoming client update, we will strive to address these developments as well as the most recent developments from GR 36/2023. If you would like to discuss this with us, please contact us by email at [info@tnklaw.id](mailto:info@tnklaw.id) or phone at (021) - 2528636.

*Tamba and Kumara Law Offices is a full-service Indonesian corporate and commercial law firm with high-quality legal services with a broad range of domestic and international clients.*



Narada Kumara  
**Managing Partner**  
[narada.kumara@tnklaw.id](mailto:narada.kumara@tnklaw.id)



Hafid Triadmaja Syahputra  
**Senior Associate**  
[hafid.triadmaja@tnklaw.id](mailto:hafid.triadmaja@tnklaw.id)



M. Raihan Pramudya  
**Associate**  
[raihan.pramudya@tnklaw.id](mailto:raihan.pramudya@tnklaw.id)