

Notes from the Meeting of the Transparency Implementation Team
Coordinating Ministry for Economic Affairs
A.A. Maramis Building II
Floor 4

2 August 2012, 10:00 am to 12:30 pm

Attendees

Government

1. Agency for Upstream Oil and Gas Business Development (BPMIGAS), Agus Budiyanto
2. BPMIGAS, Edy Riantono
3. BPMIGAS, Lambok Hutauruk
4. Agency for Oversight of Finance and Development (BPKP), Deputyship for National Accounting, Bonny Anang Dwijanto
5. Mining and Energy Office, East Kalimantan province, H. Amrullah
6. Mining and Energy Office, East Kalimantan province, H. Wagimin
7. Mining and Energy Office, East Kalimantan province, Istiadi
8. Ministry of Energy and Mineral Resources, Directorate General of Minerals and Coal, Paul Lubis
9. Ministry of Energy and Mineral Resources, Directorate General of Oil and Gas, Agus Cahyono Adi
10. Ministry of Finance, Directorate General of Budget, Evi Karmilah
11. Ministry of Finance, Directorate General of Budget, Ganesy Mayoreta
12. Ministry of Finance, Directorate General of Treasury, Dani R.
13. Ministry of Finance, Directorate General of Fiscal Balancing, M. Hijrah
14. Ministry of Finance, Directorate General of Fiscal Balancing, Sandy Firdaus
15. Coordinating Ministry of Economic Affairs, Deputyship for Macroeconomic Coordination and Finance, Sartono
16. National Oil Company (PT. Pertamina), Ari Budiarko
17. National Oil Company (PT. Pertamina), Bambang Suprihanto

Industry

1. Indonesian Coal Mining Association, Supriatna Suhala
2. Indonesian Mining Association, Winardi
3. Indonesian Mining Association, Hendra Sinadia
4. Indonesian Petroleum Association, Dipnala Tamzil

NGO

1. Institute for Essential Services Reform (IESR), Morentalisa Hutapea
2. Publish What You Pay (PWYP) Indonesia, Former National Coordinator, Ridaya La Ode Ngkowe
3. Publish What You Pay (PWYP) Indonesia / Indonesian Parliamentary Center (IPC), Sulastio
4. Publish What You Pay (PWYP) Indonesia, Maryati
5. Publish What You Pay (PWYP) Indonesia, Resa Raditio
6. Revenue Watch Institute (RWI), Roslita Arsyad
7. Transparency International – Indonesia, Frenky Simanjuntak

Coordinating Ministry for Economic Affairs, Deputyship for Energy and Mineral Resources and Forestry

1. Assistant Deputy for Electricity Businesses, Emy Perdanahari
2. Official in Charge of Making Commitments, EITI, Agus Wibowo
3. Head of Division for the Distribution of Oil, Kisma Raharjo
4. Head of Division for the Production of Oil, Suryawarman
5. Head of Division for the Distribution of Gas, Herman M.Kaharmen
6. Head of Division for the Production of Gas, Subejo
7. Support Staff, Yuliana
8. Support Staff, Hadi Purnama

EITI Indonesia Secretariat

1. Deputy, Secretariat to the Transparency Team, and Team Leader, Ananda Idris
2. Regulatory Specialist, Ronald Tambunan
3. Revenue Specialist, Ambarsari Dwi Cahyani
4. IT Specialist, Nugraha Adi Prasetya
5. Finance Specialist, Agus Prasetyono
6. Communication Specialist, Inggita Notosusanto
7. Stakeholder Specialist, Dyah Hestu Lestari
8. Administrative Specialist, Anita Pascalia
9. Advisor EITI, World Bank, David W. Brown

Proceedings of the Meeting

Emy Perdanahari

On behalf of the Coordinating Ministry for Economic Affairs Deputy Minister for Energy and Mineral Resources and Forestry, the Assistant Deputy Minister for Energy and Electricity (henceforth, “Emy Perdanahari” or “the Assistant Deputy Minister”) opened the meeting by outlining a six point agenda:

1. Progress on EITI Indonesia reporting
2. Preparations for Reconciliation
3. Formation of a Technical Team
4. Scope for 2010 report
5. Terms of Reference for the Implementation Team
6. Preparations for Validation

Discussion on each of these six agenda items then unfolded as follows:

1. Reporting

Emy Perdanahari

The Assistant Deputy Minister provided an explanation of the current status of company reporting.

With regard to oil and gas operators, it was explained that 56 out of 57 have already reported. The only one that has not yet reported is Benuo Taka, an operator controlled by the government of Penajam Paser district, in East Kalimantan province.

With regard to coal production units, 39 out of 54 have reported. The 15 that have not yet reported may be roughly divided into three groups:

Ten (10) coal units about which the Secretariat is still guardedly optimistic that templates can be secured:

- Bahari Cakrawala Sebuk
- Bukit Baiduri Energi
- Gema Rahmi Persada
- Harifa Taruna Mandiri
- Interex Sacra Raya
- Mandiri Intiperkasa
- Multi Harapan Utama
- Multi Tambang Jaya Utama
- Nusantara Thermal Coal
- Riau Bara Harum

Four (4) units about which the Secretariat is significantly less optimistic that templates can be secured

- Barajaya Utama
- Kayan Putra Utama Coal
- Transisi Energi Satunama

- Fajar Bumi Sakti

One (1) coal production unit, Senamas Energindo Mulia, which is a special case, as it is currently engaged in a legal dispute with the government.

With regard to mineral production units, 15 out of 17 have reported. The two that have not are tin units, Donna Kembara and Makmur Jaya. The Secretariat went on a special investigatory trip to Bangka Belitung District to attempt to locate these two firms, and was unable to do so. It was determined that the firms have shut down, effectively disappeared, and that it will border on the impossible to secure their reporting templates. Evidence to support this finding was shared with the Implementation Team. As a result of this investigatory trip, the Secretariat recommends that the Implementation Team remove these two units from the list of reporting companies.

Dyah Hestu Lestari

Regarding the four as-not-yet reporting coal production units, about which the Secretariat is not overly-optimistic that templates can be secured, all four of these companies (or in the case of Fajar Bumi Sakti, its affiliates) came to the 3 May 2012 socialization in the Directorate General of Minerals and Coal, and agreed with the Directorate General's Section Head for State Revenue to report by 17 May 2012. None have reported.

Supriatna Suhala

I can help with at least one of the four production units, Fajar Bumi Sakti [Editor's note: Fajar Bumi Sakti is owned by the Bakrie Group].

Emy Perdanahari

Wouldn't it just be easier if the Implementation Team were to remove from the list of reporting coal units the four about which the Secretariat is less optimistic that it can secure templates.

Ananda Idris

It might not be advisable to do that. Each and every one of these companies were specified in the scoping note as material. So we need a good reason for removing them from the list.

David Brown

In the case of the two tin companies which no longer exist, and which cannot be contacted, the Implementation Team would appear to have an argument for removing these two units from the list of reporting companies.

However, for the four highly-uncooperative coal units, whose addresses we know, whose offices we have visited in some cases, which remain in active production, and whose phone numbers we regularly attempt to call (although they generally no longer take our calls), more effort might need to be made by the Implementation Team, before these are removed from the list of reporting companies.

Emy Perdanahari

I agree that we should keep trying on the four un-cooperative coal units. As for the two tin production units that no longer exist, I would like to suggest that these two be rescinded from the list of reporting companies. [Editor's note: No objections were heard, and the suggestion was adopted]

With regard to the ten (10) coal units about which the Secretariat is still marginally hopeful, let's re-double our efforts and try to secure the reporting templates from these ten (10) by the end of the fasting month [Editor's note: The fasting month ends on 19 August 2012].

Lambok Hutaaruk

With regard to the single outstanding non-reporting oil and gas operator, Benuo Taka, I will contact it, and hopefully we can get its report by next week.

Ananda Idris

I also talked with BPMIGAS in East Kalimantan two weeks ago and asked for its assistance with Benuo Taka. I sent a follow up e-mail BPMIGAS in East Kalimantan last week. Hopefully that will help. [Editors note: Last week, the Assistant Deputy Minister sent a letter to Benuo Taka as well.]

Emy Perdanahari

The Assistant Deputy Minister then proceeded to provide an explanation of the current status of government reporting.

Three government entities, the Ministry of Energy and Mineral Resources' Directorate General of Oil and Gas, the Executive Agency for Upstream Oil and Gas Business Development (BPMIGAS), and the Ministry of Finance's Directorate General of Budget's Directorate of Non-Tax Revenues have all reported.

[Editor's note: The Ministry of Finance's Directorate General for Fiscal Balancing has also reported, after a fashion. It has submitted an (approximately) 10 cm thick pile of documents under a formal signature, and expects the Secretariat to transfer this information to templates.]

Two government entities have not reported: Non-reporting by one of these two, the Directorate General for Minerals and Coal, seems like a “manageable” problem. The problem associated with non-reporting by the second of these two, the Directorate General of Tax, is a comparatively “heavy” problem.

Ronald Tambunan

On some level, the Directorate General of Minerals and Coal’s slowness is understandable, given that they are busy with determining which of the 10,000 district licensed mining permits are clean and clear, and also busy re-negotiating mineral and coal contracts of work.

However, the Directorate General of Tax’s slowness is less understandable. The dispute revolves around differing perceptions within the Directorate General itself, regarding the Tax Law.

Ambarsari Dwi Cahyani

Our discussions with the Directorate General have been ongoing for some time. Our understanding until very recently, based on a series of discussions with the Expert Staff to the Director General of Tax [Editor’s note: John Hutagalung], is that in order for the Directorate General of Tax to report on revenues received from mining companies, that those companies would need to furnish a letter authorizing the Directorate General of Tax to do so.

Ronald Tambunan

Then last week, the Expert Staff on Revenue to the Minister of Finance [Editor’s Note: Robert Pakpahan], sent us to discuss this matter with the Large Taxpayers Office (LTO). The LTO told us that a letter of authorization from companies was not sufficient, but that we would also need the Minister of Finance himself to provide written authorization, on a one by one basis, for each of the 71 EITI reporting mineral and coal companies, in order for the Directorate General to be able report on those companies.

We were also instructed by the LTO to go to the Directorate General of Tax’s Director of Tax Regulation I and the Director of Tax Efficiency, Potential and Compliance to seek further guidance.

Emy Perdanahari

We will obtain clarity on this matter from the Directorate General of Tax after the Islamic holiday (Idul Fitri) is over, and then we will report back to the Implementation Team.

Ridaya Laodengkowe

I was present at two of the earlier meetings with the Expert Staff to the Director General of Tax and can confirm the guidance that he gave at that time. Now that there is new/differing guidance being offered by the LTO, that new guidance should be sought in writing.

Supriyatna Suhala

The problem could be solved if EITI were enacted in law, rather than a Presidential Regulation.

Lambok Hutaaruk

I would rather not see us call for the making of an EITI law that contradicts the provisions of the Tax Law.

Emy Perdanahari

The Secretariat will prepare a letter to DG Tax on this matter immediately, requesting clear guidance.

Maryati

The Directorate General of Tax has not sent any representatives here today. But the Directorate General Tax of Minerals and Coal has. I would like to hear from them about their intentions in the area of government reporting.

Paul Lubis

We have sent a soft copy of our report to the Secretariat. Before our report is considered final, we will need to have one closed meeting (*konsinyasi*) with the Secretariat.

Regarding non-reporting by selected coal production units, what I am hearing from them is, "Why should we report? We already submit reports to the ESDM on our revenues paid."

Ambarsari Dwi Cahyani

I confirm that we did in fact receive raw data in an electronic form from the Directorate General of Minerals and Coal on all the non-tax revenues they received from mineral and coal production units in 2009.

This raw data is in the form of an approximately 10,000 row spreadsheet. I am currently cleaning up and analyzing that data, and transferring it over to templates.

Later the Secretariat will need a formal meeting with the Directorate General of Minerals and Coal, to confirm that our interpretation of your raw data is correct.

Paul Lubis

Yes, we will be more than happy to sign off on the templates after you fill them in.

Maryati

Why is the Secretariat doing this work?

Emy Perdanahari

The Directorate General for Oil and Gas, BPMIGAS, and the Directorate General for Budget have, so far, all managed to fill in their templates on their own. Next year, we trust that the Directorate General for Minerals and Coal will also be able to do this as well.

2. Preparations for Reconciliation

Emy Perdanahari

The Assistant Deputy Minister reported that four firms which had expressed an interest in performing the EITI reconciliation, and had been ranked by the Coordinating Ministry for Economic Affairs' Procurement Committee.

Next steps in the process will include securing World Bank approval of the ranking of the firm, requesting a proposal from the top ranked firm, evaluating that proposal, negotiating a contract with the firm, securing the agreement of the Implementation Team for that firm, and the actual signing of the contract with the firm and the starting of work by the reconciler.

If things move extremely quickly and efficiently, the reconciler will be ready to start work in late September. But delays are possible.

Lambok Hutaaruk

It seems unrealistic, not to mention unethical, to expect a lot of progress on procuring the reconciler during the Islamic holidays.

3. Formation of a Technical Team

Emy Perdanahari

The Assistant Deputy Minister informed the Implementation Team that nominations have been solicited from each government member of the Implementation Team for one or two nominees to serve in a Technical Team.

The main purpose of the Technical Team will be to assist in preparing materials for the meetings of the Implementation Team, assisting members of the Implementation Team in fulfilling their responsibilities in the implementation of the EITI, and representing members of the Implementation Team in EITI meetings inside and outside the country.

Accordingly, each government official on the Implementation Team is being asked to nominate two members to the Technical Team, at least one of whom should be at level of Echelon 2 (Director-equivalent).

Assistant Deputy Minister Emy then went one-by-one through each of the GOI representatives on the Implementation Team to inquire about which had representation (of any type) in the day's meeting, and which had designated in writing their representatives for the Technical Team.

Table 1: GOI members in the Implementation Team with representation in the meeting, and which have designated in writing their representatives for the Technical Team.

Government Member of Implementation Team	Represented at meeting?	Designated representative to the Technical Team?
Ministry of Finance, DG of Budget	Yes	Yes
Ministry of Energy and Mineral Resources Ministry, Secretary General	No	No*
Coordinating Ministry of Economic Affairs, Deputy Minister of International Affairs	No	No
Coordinating Ministry for Economic Affairs, Deputy Minister for Macroeconomics	Yes	Yes
Ministry of Finance, DG of Tax	No	Yes
Ministry of Finance, DG of Treasury	Yes	No
Ministry of Finance, DG of Fiscal Balancing	Yes	No**
Ministry of Energy and Mineral Resources, DG of Oil and Gas	Yes	Yes
Energy and Mineral Resources Ministry, DG of Minerals and Coal	Yes	No***
Ministry of Home Affairs, DG for Development of Regional Financial Administration	No	No
Body for the Oversight of Finance and Development (BPKP)	Yes	Yes
Head of Executive Agency for Upstream Oil and Gas Business Development (BPMIGAS)	Yes	Yes
General Director of National Oil Company (Pertamina)	Yes	Yes
Regional Secretary of East Java Province	No	No
Regional Secretary of East Kalimantan Province	Yes	Yes****
Regional Secretary of Riau Province	No	No

*Emy Perdanahari said she would contact the Secretary General.

**Signed only by a Director, not by a DG. Therefore needs to be resent.

***Asked that letter requesting the nomination of the DG of Minerals and Coal be resent.

****Claimed to have been sent. But letter was never received.

Emy Perdanahari

The Assistant Deputy Minister re-iterated that the purpose of the Technical Team is not just to have institutional continuity at the meetings of the Implementation Team, but also so that the Secretariat can have a point person in each agency that can assist the Secretariat with difficulties in implementation. She gave as an example the possibility of the Directorate General of Minerals and Coal assisting the Secretariat in securing templates from the 15 not-yet-reporting coal production units.

Maryati

NGOs may elect to offer for consideration the names of possible representatives to serve on the Technical Team

4. Scope for 2010 report

Emy Perdanahari

The Assistant Deputy Minister then distributed the draft scoping note for the 2010 EITI Indonesia report, and explained that the scope for 2010 is proposed to be **exactly the same** as it was for 2009, in terms of:

- Revenue streams to be reported upon
- Materiality (all oil and gas production units will report which have deposited government oil and gas physical entitlements valued in excess of USD 0, as will mineral and coal production units which have paid royalties in excess of USD 500,000)
- Government entities to report
- The reconciliation methodology to be used (limited audit)

However, the population of reporting firms will significantly expand. In the 2009 report, only 129 production units were asked to report. In the 2010 report, 167 will be asked to report.

Agus Cahyono Adi

I object to language suggesting that oil and gas companies “deposit” oil and gas physical entitlements with the government. It is more accurate to say that they “contribute” to the government.

Evy Karmila

The most accurate source for the determination of the dollar value of oil and gas physical entitlements surrendered to the government in 2010 is not the 2010 Government Financial Report, but the 2011 Central Government Financial Report.

Emy Perdanahari

The Assistant Deputy Minister asked that the Secretariat make sure that these comments are reflected in the 2010 scoping note. She also asked each member of the Implementation Team to review the scoping note over the coming month, and come back to the next meeting of the Implementation Team prepared to amend as necessary but, ultimately, adopt the note.

5. Terms of Reference for the Implementation Team

Emy Perdanahari

The Assistant Deputy Minister explained that in order to bring Indonesia in compliance with some aspects of EITI Rule 4, that it was necessary for a Terms of Reference (TOR) to be drawn up for, and approved by, the Implementation Team.

The draft TOR was then reviewed point by point. Most of the draft TOR was derived from the text of Presidential Regulation 26/2010.

However, the last section of the draft TOR contains some new provisions not included in the Presidential Regulation, such as:

- that a majority of members of the Implementation Team or their representatives must be present in order for a quorum to be reached
- that invitations will be issued for meetings one week ahead of time, with materials for consideration in those meetings to be appended to invitations
- that decisions will be taken by consensus, but that if this is not possible, that decisions will be taken by majority vote, with at least one member from each of the three stakeholder groups (government, industry and civil society) voicing their support, in order for a motion to be passed.

Minor technical suggestions were made from the floor throughout the review. The Secretariat was directed to amend the TOR to reflect those changes. With these minor technical changes, the TOR was adopted.

6. Validation

Emy Perdanahari

The Assistant Deputy Minister explained that in order to ascend to compliant status, and in any case in order to retain its candidate status, Indonesia must undergo EITI validation by no later than April 2013.

She also noted that EITI Rules require that implementing governments pay for at least 50.1 percent of validation and that one of (at this time) 13 EITI International Secretariat-authorized companies perform the validation.

She added that formal written guidance had been provided by the Agency for the Procurement of Goods and Services that any foreign firm to bid for the validation should enter into a cooperation agreement with an Indonesian company.

A long discussion then took place, whose main proponents and points are distilled below:

Lambok Hutaaruk

Validation is not in the Presidential Regulation 26/2010

Ronald Tambunan

True. But the fact that Coordinating Minister for Economic Affairs sent a letter on behalf of government in September 2010 requesting EITI Candidacy, and stating the RI's intention to become EITI compliant, means that Minister intends to undertake all steps toward compliance, which include undergoing validation.

Lambok Hutaaruk

Perhaps. But it may also be that a government regulation authorizing Indonesia's participation in a validation is needed. The Implementation Team does not possess the authority to hire a validator. This should be taken to the ministerial-level Steering Team.

Agus Cahyono Adi

There is no mandate in Presidential Regulation for the Implementation Team to implement the EITI. There is only a mandate for the Implementation Team to implement the Presidential Regulation.

Emy Perdanahari

We will not settle this issue in today's meeting. If needed, we will explore the possibility of taking this matter to the Steering Team.

The meeting was adjourned.