

Unveiling Indonesia's New Oil Palm Profit Sharing Fund: Government Regulation No. 38 of 2023

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On 24 July 2023, the President of the Republic of Indonesia signed the new Government Regulation No. 38 of 2023 concerning Oil Palm Plantation Profit Sharing Fund (*Dana Bagi Hasil* or “DBH”) (“GR 38/2023”), which serves as a legal basis that regulates the disbursement of the DBH, which forms part of the transfers to the regions. These transfers are allocated based on a percentage of specific revenues within the state's revenue and expenditure budget (*Anggaran Pendapatan dan Belanja Negara* or “APBN”), as well as certain performance metrics. They are distributed to producing regions to address fiscal imbalances between the government and regions, and to non-producing regions to mitigate negative externalities and promote greater equity within a given area. This regulation is in accordance with Law No. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, which empowers the Central Government to identify and allocate various types of DBH sourced from state revenues at the regional level. Specifically, the DBH for oil palm plantations is determined based on a set percentage of revenue generated from oil palm plantations and is distributed using a formula that incorporates both revenue and performance metrics.

Allocation of Palm Oil DBH

GR 38/2023 stipulates that Oil Palm Plantation DBH (“Palm Oil DBH”) is DBH allocated based on a percentage of revenue from export duties and levies on palm oil, crude palm oil, and/or their derivative products. Considering the above, Palm Oil DBH sourced from export duties and levies on palm oil that are regulated by the Ministry in the state financing sector, both of which are known to be paid to the Central Government as part of the APBN. Upon the issuance of GR 38/2023, such Palm Oil DBH shall become a part of the “Transfers to Regions (*Transfer ke Daerah*)” which means the funds are sourced from the APBN and are part of state spending allocated and channelled to the regions to be managed by the regions in the context of funding the implementation of government affairs which fall within the authority of the regions.

The ceiling for Palm Oil DBH as mentioned above is set at a minimum of 4% (four percent) of the APBN and determined at the sole discretion of the Central Government as regulated by Presidential Regulations which in general provide the details of the APBN.

Utilization of Funds

A substantial portion of the Palm Oil DBH, 60%, is allocated to the producing regency/city, with 20% going to each of the related province and other regencies/cities directly adjacent to the producing area. The primary purpose of these funds is to finance infrastructure projects, including road construction and maintenance, along with other activities as determined by the Minister in the state financing sector.

Further provisions concerning the allocation, planning and use, distribution, reporting, monitoring and evaluation, and imposition of sanctions regarding Palm Oil DBH will be regulated in regulations of the ministry in the state finance sector.

In connection with the above, the implementation of these new policies, as outlined in GR 38/2023, is expected to bolster the palm oil industry, mitigate fiscal imbalances, and minimize negative externalities associated with oil palm plantations. By promoting economic growth and improving public services in related areas, Indonesia aims to achieve a more sustainable and prosperous future for its palm oil sector.

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The article above was prepared by Dentons HPRP's lawyers

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