

INDONESIA'S SHIFTING COAL MONEY

How vast sums have been
moved offshore and out of sight

Part 2: Luhut Pandjaitan and the
hidden buyers

PART 2: LUHUT PANDJAITAN AND THE HIDDEN BUYERS

The second part of our investigation into the Indonesian coal industry focuses on Luhut Binsar Pandjaitan, one of the most powerful Indonesian officials in recent years. A former general, diplomat and businessman who has been a senior government advisor and a minister, Pandjaitan is a close ally of President Joko Widodo. He is currently the Co-ordinating Minister for Maritime Affairs.¹

Up until November 2016, Pandjaitan held a controlling stake in the Indonesian coal company PT Toba Bara Sejahtera.

He sold this controlling stake, when in his current ministerial role, for an undisclosed amount. This briefing looks at how the identities of those who bought this controlling stake are hidden behind an offshore trust company in Singapore.

While there is no suggestion that Pandjaitan failed to meet any legal obligation to disclose any of this information, or broke any rules of conduct for Indonesian politicians, it is reasonable to ask who ultimately owns the stake held by the trust company that bought the controlling interest in the company from Pandjaitan, and how much it paid. But when Global Witness wrote to Pandjaitan, Toba Bara Sejahtera and the offshore trust company to ask them these questions, none of them responded.

We show below why several questions remained unanswered about Pandjaitan's

sale of his controlling stake in the company. We outline the details of the sale, how the new owners are hidden and the scale of the potential value of the sale.



Luhut Binsar Pandjaitan stands alongside World Bank President Jim Yong Kim and IMF chief Christine Lagarde among others during IMF and World Bank annual meetings in Nusa Dua, Bali on October 14, 2018. © GOH CHAI HIN/AFP/Getty Images

We also explain why those elements, coupled with Pandjaitan and the companies not responding to questions put to them, leave several unanswered questions, which might create risks for investors.

The fact that Indonesia is about to have an election, and that the transaction involved a senior member of the government, means that these unanswered questions also become a matter of public interest.

This story like others in our series on Indonesian coal companies features an offshore company at the heart of a transaction worth millions of dollars, and in this case its opaque ownership leaves unanswered questions about a former business deal involving an influential figure in Indonesia's upcoming election.

It also highlights how the majority of the profits from an Indonesian coal company are now destined to flow offshore.



Luhut Panjaitan during a press conference after a meeting in Jakarta on December 21, 2015 © ADEK BERRY/AFP/Getty Images

QUESTION 1: WHAT DID THE SALE LOOK LIKE?

Back in 2016, Pandjaitan owned 99% of the shares of a private company called Toba Sejahtra. This company, in turn, owned 72 per cent of a medium-sized Indonesian coal mining company called Toba Bara Sejahtra (referred from now on as Toba Bara).¹

The latter has coal mines in the eastern part of the island of Kalimantan and is

constructing two coal-fired power plants on the neighbouring island of Sulawesi.²

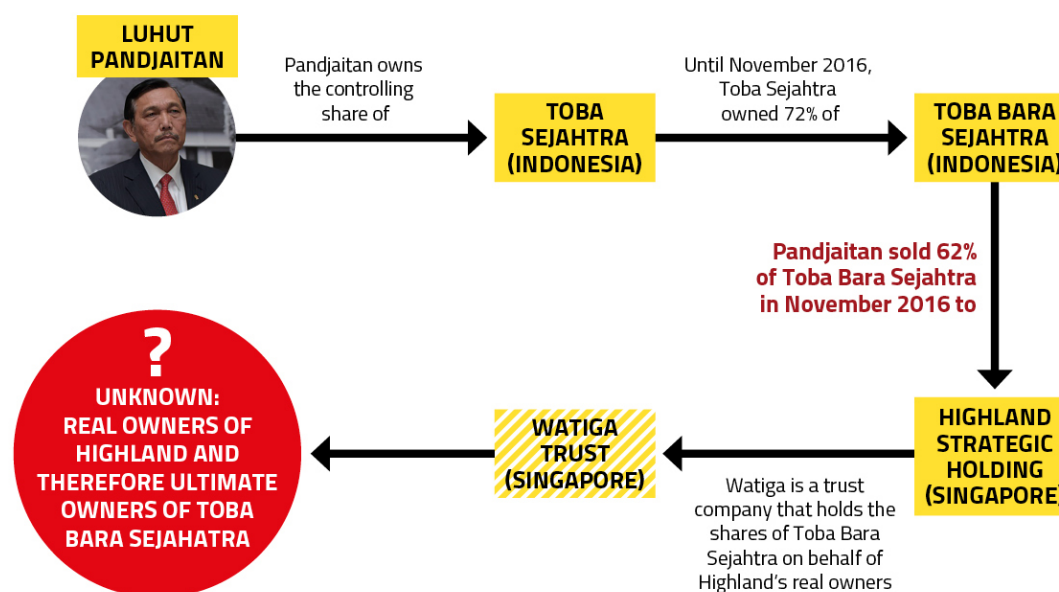
On 9th November 2016, Toba Sejahtra agreed to sell 61.79 per cent of Toba Bara's shares to a Singapore company called Highland Strategic Holdings.³

The deal was completed in January 2017.⁴ Toba Sejahtra, Pandjaitan's company, continued to own 10 per cent of Toba Bara after the sale of its majority shareholding.⁵

Highland is owned by Watiga Trust Pte Limited, which is based in Singapore.⁶ A trust company holds assets on behalf of other investors. In the case of Highland, it is not possible to find out from public documents who these investors are.

Toba Bara has said only that Highland is owned by Watiga Trust "as trustee for a private investment trust comprised of institutional and high net worth individual investors."⁷ In other words, Watiga Trust, and Watiga Trust's owners are not the ultimate beneficial owners of Highland Strategic Holdings, but hold the shares in Toba Bara on behalf of other people that ultimately own Highland. Global Witness wrote to both Toba Bara and Watiga Trust to ask them to identify the ultimate beneficial owners of Highland Strategic Holdings, but both companies did not reply.

PANDJAITAN'S SALE OF TOBA BARA TO UNKNOWN OWNERS



QUESTION 2: HOW MUCH DID PANDJAITAN RECEIVE FOR THE SALE?

The amount the shares were worth is very significant.

Highland bought 1.24 billion shares in Toba Bara but the latter did not disclose the actual price.⁸ We do know however from information reported by the Wall Street Journal that shares in Toba Bara were trading at 900 rupiah each on the Jakarta stock market on 9th November 2016, when the transaction was agreed. This implies that the market value of these shares was at least 1.119 trillion rupiah or **just over US\$85 million** at that date.⁹

The Thomson Reuters' publication *Asian Legal Business*, which reports the value of deals advised on by Southeast Asian law

firms, estimated the value of the transaction at **US\$46 million**.¹⁰ Highland agreed to take over US\$25.8 million of debt owed by Toba Bara to Toba Sejahtra, which if added to that estimate would make the total value of the transaction **US\$71.8 million**.¹¹

So although it is not possible to tell exactly how much Pandjaitan received from this sale, it is fair to say that he would have received tens of millions of dollars. Global Witness asked about the sale price but he but he did not respond.

QUESTION 3: WHAT ARE THE IMPLICATIONS FOR THE PUBLIC INTEREST?

The fact that the identity of who ultimately owns Highland Strategic Holdings is not publicly available has several potentially important implications for the Indonesian public to consider. This is particularly relevant now because the scrutiny of politicians' ownership of companies has become an important issue in the current election campaign. It was raised during a live televised debate between the two rival presidential candidates in February, and continues to be a matter of public discussion.

The first issue is that in these circumstances it is impossible to know whether the new controlling owners of a company might also be politically connected people, such as government officials, other politicians, their family members, or business associates. This uncertainty could raise concerns because many coal companies stand to benefit from the current Indonesian government's policy towards coal, especially its plans for a large number of new coal-fired power stations to be built, which will continue to be the case if the next government perseveres with this policy.

This policy will help to maintain a market for companies which mine coal, at a time when international demand is dwindling, and will provide a boost for those coal companies that are in the running to build or run these power stations. However, without the information about the real owners being publicly known, the Indonesian public are unable to know whether this applies to the new owners of Toba Bara or not.



An aerial view of a coal mine in East Kalimantan, Indonesia. © BAY ISMOYO/AFP/Getty Images

Second, while there is no suggestion that Pandjaitan has failed to fulfil any legal requirements over the disclosure of both these pieces of information, this illustrates a problem that exists in many countries. Namely, that citizens are unable to know what terms senior public officials have sold assets for, including whether they have done so at the market value or not, and therefore are unable to be sure that no implication of influence might arise over their public roles.

In this particular case, Pandjaitan has not chosen to disclose the actual price he received and with no information from the buyers either it is impossible for the public to assess this transaction.

This is especially significant as matter of public interest at a time when he is a senior serving public official with strong political influence, could continue to be so if his President Joko Widodo is successful in the Indonesian election next month, and the issue of politicians' ownership of companies is an ongoing matter of debate.

QUESTION 4: WHY MIGHT THIS CREATE RISKS FOR INVESTORS AND FINANCIERS?

The fact that the most basic question about the company - who owns it – is not publicly known is significant, and is illustrative of a broader problem and set of risks facing investors and financiers.



Excavators operating in an open pit coal mine in South Kalimantan, Indonesia. © DADANG TRI /Bloomberg via Getty Images

In order to make sound and responsible investment decisions, investors need to know who are the ultimate owners of a company they are dealing with and what their track record is.

Conversely, without knowing the owners' identity, it is very hard for investors to manage all types of risk—both financial risks and non-financial ones, such as legal and reputational risks.¹²

This set of risks applies to any future potential investor in Toba Bara as well as banks and other financial institutions that are considering financing the coal-fired power stations that the company is involved in.

In summary, a number of unanswered questions remain from the fact that Pandjaitan sold shares worth tens of millions of dollars to hidden buyers, and that the actual sale price also remains unknown.

Pandjaitan has not chosen to provide information which could help clarify the answers. These questions are a matter of legitimate public interest, especially as this subject has become a topic of debate during the election campaign.

This again highlights questions, albeit different ones, about a coal business transaction of an influential politician.

This story along with others in the series also highlights a range of potential risks faced by investors in Indonesian coal companies and those international private banks, development banks and other publicly owned banks around the world considering financing coal-fired power stations. Risks which should give them all serious pause for thought.

Luhut Pandjaitan could resolve the unanswered questions highlighted in this document, by publically declaring who he sold Toba Bara to and for what price.

ENDNOTES

¹ PT Toba Bara Sejahtera. Disclosure of information concerning affiliated transactions. 27th January 2017, Section 2. Toba Sejahtera, and Toba Bara Sejahtera Financial Statements first three months 2018, note 1.

² PT Toba Bara Sejahtera. Financial statements for the three months to March 2018. Note 1. See also Note 42d and e, and 4e.

³ Highland Strategic Holdings Pte Ltd, Register of members. Toba Bara, Disclosure of information concerning affiliated transactions, 27th January 2017, section A and 3. PT Toba Bara Sejahtera, financial statements for the three months to March 2018, note 1.

⁴ Ibid. footnote 2.

⁵ Toba Bara, financial statements for the three months to March 2018, note 24.

⁶ Toba Bara, Disclosure of information concerning affiliated transactions, 27th January 2017, section 3, Highland Strategic Holdings Pte Ltd, Register of members, and www.watiga.com

⁷ Toba Bara, Confidential preliminary offering memorandum, subject to completion, dated February 23 2018, p.172

⁸ Toba Bara, Disclosure of information concerning affiliated transactions, 27th January 2017, section A.

⁹ For the share price on 9 November 2016 see Wall Street Journal:

<https://quotes.wsj.com/ID/XIDX/TOBA/advance-d-chart>. For the exchange rate between Rupiah and US Dollars on that date see www.xe.com. The exact amount of shares sold was 1,243,518,189

¹⁰ Asian Legal Business, Southeast Asia deals of the week, week of January 30th 2017, Indonesia.

¹¹ Toba Bara, financial statements for the three months to March 2018, note 36.

¹² For more detail on the risks involved see the Global Witness report, Chancing it: how secret company ownership is a risk to investors: <https://www.globalwitness.org/es/reports/chancing-it/>