

# OJK Issues New Regulations to Enhance Consumer Protection in the Financial Services Sector

By: Indra Prawira



The Financial Services Authority of Indonesia (*Otoritas Jasa Keuangan* or “**OJK**”) has issued one regulation and two circular letters in relation to consumer protection in the financial services field that will come into effect in August this year. These regulations aim to establish a *fast, low-cost and fair* scheme of dispute settlement in the financial services sector and aim also to allow the efficiency of dispute settlement mechanisms in the financial services field in Indonesia, which is expected to increase consumer trust towards financial services institutions in Indonesia.

On 23 January 2014, OJK issued Regulation No. 1/POJK.07/2014 concerning Alternative Dispute Settlement Institutions in the Financial Services Sector. This regulation governs the function and the establishment of independent institutions which are appointed by OJK to solve any dispute that has occurred between consumers and Financial Services Institutions (*Pelaku Usaha Jasa Keuangan* or “**PUJK**”) through alternative dispute settlement. The alternative dispute settlement institutions are established and held by each sector of the financial services institutions (i.e. capital market, banking, insurance, etc.), which are organized by its association. Every dispute settlement institution will be included in the List of Dispute Settlement Institutions which is appointed by OJK.

Furthermore, OJK Circular Letter (*Surat Edaran Otoritas Jasa Keuangan* or “**SEOJK**”) No. 2/SEOJK.7/2014 concerning Service and Dispute Settlement of Consumer Complaints towards Financial Services Institutions stipulates further the function and units of dispute settlement conducted by PUJK, as well as the obligation to have the manpower, system and the procedure of dispute settlement in every PUJK.

Another OJK Circular Letter concerns the education plan and business plan policy of PUJK. SEOJK No. 1/SEOJK.7/2014 concerning the Education Implementation Plan to Enhance Financial Literacy towards the Consumer and/or Society stipulates that every PUJK has to include education plans in their annual business plan and obliges PUJK to report its implementation to OJK. According to Dr. Kusumaningtuti Sandriharmy Soetiono, the OJK Commissioner in charge of Consumer Education and Protection, the arrangement of an education plan needs to refer to the Strategy of National Financial Literacy published by the President of Indonesia in November 2013. She further states, “For the first time, all of the PUJK have to submit their education plans for 2014 in November 2014. In addition, all education plan together with annual business plans have to be submitted to the supervisory board of OJK in 2015.

The chairman of the OJK Board of Commissioners, Muliaman D. Hadad, stated that OJK issued the Regulation concerning Alternative Dispute Settlement Institutions in the Financial Service Sector and both of the circular letters in order to implement the OJK Regulation No. 1/POJK.07/2013, concerning Consumer Protection in the Financial Services Sector. This mandates the OJK to provide, arrange and facilitate tools and mechanisms of dispute settlement for consumers who have suffered any disadvantage by financial services institutions.

According to Kusumaningtuti, both the regulation and circular letters will come into effect and will be applicable in law on 6 August 2014, therefore people doing business in financial service fields have time to prepare for the fulfilment of these regulations. (OJK Press Release, 25 February 2014).

# Preserving Indonesian Natural Resources - Coastal and Island

By: Milla Klarissa

For ages, Indonesia has been well known as one of the most fascinating archipelagic countries having more than 13.000 islands. These priceless resources have made Indonesia into one of the significant emerging economies through tourism and foreign direct investment. Nowadays, most the best of archipelagic spots in Indonesia are owned or funded by international investors. For instance the development of Raja Ampat in Papua, Belawan Island and Bira Beach in Makassar are funded by International investor. To manage these dynamics and to prevent any severe damage and losses, Parliament has renewed and reinvigorated the controlling of coastal areas and small island regulation in Indonesia originally under the "Law of Coastal Areas and Small Islands No. 27 Year 2007" (hereinafter UU 27/2007) with the "Law of Costal Areas and Small Islands No. 1/2014" or Undang-Undang No. 1 Tahun 2014 tentang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil (hereinafter UU 1/2014).

In brief, it has been acknowledged that UU 1/2014 regulates fundamental aspects in the regulation of coastal areas in Indonesia; the changes are as follows:

## Limited Resource Usage

A prominent feature of UU 1/2014 is the preservation of coastal resources and natural resources, which urgently required by Indonesia. Although, the limitation in using resources is still implicitly stated, this could be one of the important turning points in taking the regulation of natural resources to another level. To implement it, the government has changed the -"tagline"- of the coastal business licence through UU 1/2014. In the new regulation the licence is known as "Izin Lokasi". Before, in Article 16 UU 27/2007, the coastal business licence was "Hak Penguasaan" instead of "Izin Lokasi". Even though this is merely a change of the "tagline" this is an important feature that can improve the people's linguistic paradigm. In the Indonesian language and according to Indonesian norms, "Hak Penguasaan" has a strong meaning which tended to mislead by the user. Recognizing that, the Indonesian government changed the "tagline" so that the "word" licence is to be more visible, not only for the sake of better regulation but also to improve the good faith of the user. As a result, Article 16 UU 1/2014 clearly states that all business persons who want to exploit coastal resources should hold an "izin lokasi". "Izin Lokasi" has a better connotation as licence, meaning "permit". Moreover, the new limitation also appears in the content of the Article itself, for instance, in article 18, it states that after having a license for 2 years company should undertake significant business activity; if not the license will be revoked and the right of ownership is thus forfeited. Moreover, article 19 of UU 1/2014 also states in detail which kind of coastal business can be approved by the government. In short, UU 1/2014 heralds a new paradigm for international and national business persons regarding how they should treat Indonesia's resources.



## The voice of Indigenous people

Most of the attractive coastal areas and islands of Indonesia that have high economic value are located in the outlying or rural area which are largely inhabited by indigenous people. Knowing this situation, the government accommodates the voice of indigenous people so that they are heard and their interests feature prominently in the regulation. From article 20 until 22 UU 1/2014 it emphatically states that the licensing of coastal businesses should make indigenous people the priority and commercial enterprise shall not conflict with their aspirations and interests.

## Treating Conservation Area

The detail of UU1/2014 is not merely only in respect of ordinary coastal areas but also for conservation areas. There are some places that have become conservation areas but they need improvement or some investors tempted to transform them into commercial zone. In UU27/ 2007 there was no detailed explanation concerning the transformation of conservation areas into commercial areas. Obviously, a conservation area is more profitable and attractive if commercialized, therefore, this aspect become one of the central concern of UU 1/2014. Article 30 UU 1/2014 explains that a conservation area may for some reason become a commercial area, but this will be long and complicated process. For instance, based on article 30, this should approved by presidential decree and the local house of representatives. Moreover, for the purposes of such a proposal, a company or an individual should organize research with a *bonafide* team which could examine and investigate the area to ensure it can be preserved whilst being commercialized.

Prof. Dr. Balthasar Kambuaya, MBA, Minister of Environment has spoken clearly in this regard, stating that as an agrarian country, Indonesia is at stake to create better and clearer regulations to preserve those valuable resources. Therefore, all Indonesians and their government are hoping that this new regulation will be strong landmark in preserving natural resources.

# The Use of Finger Prints on the Minutes of Notary Deeds

By: Lie Yessica Susanto

A notary is defined as a public officer who is authorized to execute an original deed and to exercise authority in respect of other activities, such as to certify signatures, the determination of the date of a private agreement, attesting to the compatibility between the printed or reproduced and the original letter, provide legal counselling on authentic deed making procedures, drawing up deeds relating to land, and so forth. (*Vide*: Article No. 1 paragraph (8) *juncto* Article 15 Paragraph (2) of the Law No. 2 of 2014 on Notaries)

In consideration that an authentic notary deed is the most powerful and fullest written evidence available, it follows that the notary cannot arbitrarily make the aforementioned authentic deed, and that everything shall be with reference to and in accordance with the prevailing regulations. Therefore, a specific regulation which regulates the duties and authority of notary as a public officer is needed, namely the Notaries Law.

On 15 January 2014, the Republic of Indonesia passed a new law regulating notaries, namely Law No. 2 of 2014 as amended by Law No. 30 of 2004 on Notaries ( "**Law No. 2/2014**"). Law No. 2/2014 amends several provisions, *i.e.* Article 16 paragraph (1) c which stipulates that notaries shall attach letters, documents, and finger prints

of the Attestor on the minutes of the deed. In the event of non-compliance, the notary will be subject to sanctions such as a written warning, suspension, honourable and dishonourable dismissal (*Vide*: Article 16 paragraph (11), Law No. 2/2014). The definition of the Minutes of the Deed is set out in Article 1.8 of Law No. 2/2014, which is the original deed that includes the signatures of Attestor, witness, and Notary which are kept as a part of the Notary Protocol.

The amendment of Article 16 (1) c of Law No. 2/2014 apparently caused controversy amongst notaries. Those who support it are of the view that this article is required as the article enables the protection of notaries in performing their duties and authorities. The objective of a mandatory fingerprint provision is to provide genuine proof that the Applicant was physically present before the Notary to execute the deed in question. In this sense, if the said Applicant repudiated his signature as indicated in the deed, the fingerprint could be used to test the repudiation.

Alongside the supporters, there are also criticisms towards the implementation of Law No. 2/2014. In this regard, the law has been viewed as a manifestation of distrust towards notarial work. Furthermore, there is also uncertainty about the mechanism for using fingerprints on the minutes of deeds, such as exactly which fingerprint should be attached to the minutes of the deed. To resolve this, the Central Board of the Indonesian Notaries Association (PP INI) arranged a meeting and agreed that either of the fingers (index or thumb) can be used as a fingerprint. However, they suggested that the commonly used fingerprint is the right or left thumb. This fingerprint shall be affixed on a paper and then attached to the minutes of deed.

Another uncertainty that arises concerns the use of electronic fingerprints and the Attestor's repetitive fingerprint mechanism when executing more than one deed. Of course, in order effectively to apply Law No. 2 /2014, implementing regulations must be issued. This is also supported by Harry Witjaksono, the Head of Special Organizer on the Notaries Draft Bill, which states that if an article is in need of clearer rules, it is possible to make an implementing regulation, such as a ministerial or a government regulation.<sup>1</sup>



<sup>1</sup> "Fingerprint Liability Provision in Notaries Law makes Notaries confused", [www.hukumonline.com](http://www.hukumonline.com)., February 10<sup>th</sup>, 2014

# Consumers Protection in the Payment Services System

By: Lie Yessica Susanto

The Bank of Indonesia has issued a new breakthrough regulation in order to synchronize banking and consumer protection regulations, namely, the Governor of Indonesian Bank's Regulation Number 16/1/PBI/2014 ("PBI 16/1/PBI/2014"). The preamble of PBI 16/1/PBI/2014 mentions the purpose of establishing this regulation; besides supporting the operation of payment systems, it is also necessary to pay attention to consumer protection aspects.

The defining feature of Consumer Protection in the Payment Services Systems regulations is that all efforts are made to ensure the availability of legal certainty and the provision of protection when using Consumer Services Payment Systems (Article 1.2 PBI 16/1/PBI/2014). Consumer Services Payment Systems in this case implies those who utilize the services payment system from the Provider. The Provider in this case refers to each bank or other institution that maintains and facilitates payment system services activities, for which permission by the Bank of Indonesia has been obtained. The form of consumer protection is arranged in PBI 16/1/PBI/2014, and encompasses the following : issuance of fund transfer instruments and/or withdrawal of funds such as Check and Bilyet Giro, funds transfer transactions, payment instrument activities using cards, electronic money transactions, provision of transactions such as the deposit of money in rupiah at an ATM, a cash deposit machine, and so forth; the other payment systems will be defined in the provisions of the Bank of Indonesia.

The forms of consumer protection, as mentioned above, manifest as the various obligations intended for Providers, such as the obligation to have mechanisms and access to customer service procedures, procedures for granting access to services for consumers with special needs (visually impaired, speech impaired/deaf, and elderly consumers aged 60 years or above). In addition, Providers are also required to provide clear information about the benefits and risks of service payment systems, providing tools to help consumers in finding information, managing consumers' documents properly,



with clarity and accuracy, the obligation to maintain consumers' data confidentiality, and other obligations set forth in Article 3-26 PBI 16/1/PBI/2014.

To maintain and ensure compliance with these obligations by the Provider, supervision by the Bank of Indonesia either directly or indirectly ( Article 27 PBI 16/1/PBI/2014) and the absence of sanctions as stipulated in Article 29 PBI 16/1/PBI/2014 are both necessary. Sanctions may include a written reprimand, a fine, temporary suspension of all activities involving payment system services and/or license revocation. The PBI 16/1/PBI/2014 provision is expected to improve the way banks perform and enhance public trust in banks or other institutions that have obtained a license from the Indonesian Bank to implement payment system services activities.

PBI 16/1/PBI/2014 is valid from the date of its promulgation, which is January 21, 2014. However, some Provider obligations set forth in Article 31 came into force on July 1, 2014. Surveillance and effective enforcement of sanctions, and also clearer provisions in the Circular Letter of the Bank of Indonesia are indispensable for PBI 16/1/PBI/2014 to be implemented effectively.

# The Awaited Revision on Tax Incentive Regulation to Investment in Natural Gas Sector

By: Indra Prawira

Indonesia's *shale gas and coal bed methane* (CBM) industry has huge potential to become an alternative energy source to conventional gas. However, investment in these fields is still considered to be weak. According to the Director General of Oil and Gas in the Ministry of Energy and Mineral Resources, Eddy Hermantoro, potential investment in Indonesia will not flow smoothly until Government Regulation No. 52 of 2011 ("**GR 52 of 2011**") has been revised and issued.



GR 52 of 2011 establishes income tax facilitation for investment in certain business sectors and regions. This regulation stipulates changes in the levels of tax facilitation in respect of entrepreneurs. These changes are related to time flexibility in the granting of incentives, decreasing the lower limit of investment value and the addition of incentives for certain industry pioneers.

The revision of GR 52 of 2011, however, has been included in the agenda of the Ministry of Finance. The granting of incentives related to *shale gas and CBM* will

take several issues into account; amongst others, the evaluation and assessment of investment levels, available reserves, production quantities, and product users (off takers) as well as the duration of usage.

Edy adds that this evaluation and assessment will influence government negotiation with investors on *shale gas* tenders. In relation with any tender, the Ministry of Energy and Mineral Resources has already offered eight working areas of *shale gas*, which consist of five working areas through direct tender and three working areas through regular tender. The process is now concerned with the mapping of areas and securing government approval.

Whilst *shale gas* investment is still awaiting further government policy developments, Indonesian entrepreneurs have been offered investment opportunities by the Colombian Government through its highest authority on the oil and gas sector, *Colombia's National Hydrocarbon Agency*. The offer includes 97 blocks of oil and gas. This also includes investment in shale gas and CBM in large amounts. Colombia opened their investment opportunities to 19 blocks of *Unconventional Oil and Shale Gas* with a total area of 1,693 ha and 8 blocks of *Unconventional Gas Associated with CBM* with a total area of 1,265 million ha.

Apart from Indonesia, Colombia has also offered this investment opportunity to investors in the United Kingdom, Canada and the USA. However, the government of Colombia has its own reasons for making the offer specifically to Indonesia amongst others; according to Alfonso Enrique Garzan Mendez, the Colombia Ambassador to Indonesia, the Colombian government believes that Indonesia will become a global economic power and the largest economy in multilateral and regional trading blocs, such as ASEAN.