



OJK's Circular Letter on the Conversion of Rural Banks Into Islamic Rural Banks

by Eivan Hadhy Prabowo

On January 3rd 2017, the Financial Service Authority of Indonesia (*Otoritas Jasa Keuangan* or the "OJK") promulgated the Circular Letter of OJK No. 3/SEOJK.03/2017 on Business Activity Conversion of Rural Banks into Islamic Rural Banks (the "Circular Letter No. 3/2017"). In respect of the issuance of the preceding OJK Regulation No. 64/POJK.03/2016 on Business Activity Conversion of Conventional Banks into Islamic Banks, it was deemed necessary to set the Circular Letter No. 3/2017 as the subordinate legislation on the Rural Bank conversions into an Islamic Rural Bank.

As stipulated in the Circular Letter No. 3/2017, the application for a business activity conversion permit must be filed by the director of the rural bank using the format of the application letter attached in Addendum I of the Circular Letter no. 3/2017. Such application letter must attach the following:

- (a) Draft of articles of association amendment;
- (b) Minutes of General Meeting of Shareholders;
- (c) List of aspirant shareholders, along with the details of shares ownership;
- (d) List of aspirant Board of Directors and Board of Commissioners emanating from the existing directors or commissioners or the newly proposed directors or commissioners;
- (e) List of aspirant Sharia Supervisory Board (*Dewan Pengawas Syariah* or "DPS");
- (f) Statement letter from the shareholder, stating that the source of funds used in the ownership of the Islamic Rural Bank does not emanate from a loan in any way and is not for money laundering purposes;
- (g) Organization structure plan, along with the names of executive officers;



- (h) Potential and feasibility analysis on the incorporation of the Islamic Rural Bank;
- (i) Business plan including 12 months business plan activity and monthly balance sheet and cumulative loss and profit report projection;
- (j) Initial financial report;
- (k) Corporate plan;
- (l) Comprehensive work procedure systems;
- (m) Operational readiness evidence; and
- (n) Islamic Rural Bank office networks, including its principal office, branch office and cash office.

The performance of the business activity conversion must be reported using the format set out in Addendum II of the Circular Letter No. 3/2017, along with the proof of announcement of such conversion in local newspaper or the bulletin board within the domicile of the Islamic Rural Bank.

All of the abovementioned application must be submitted to the Islamic Banking Department of the OJK and copied to the principal office or the regional office of the OJK whichever the working area of such offices correlate with the principal office of the Rural Bank or the Islamic Rural Bank.

Furthermore, with the enactment of this Circular Letter No. 3/2017, the Circular Letter of Bank Indonesia No. 11/25/DPbS on Business Activity Conversion of Rural Banks into Islamic Rural Banks is revoked and no longer valid.

Development and Empowerment of Communities through Activities of the Mineral and Coal Mining Sector

by Alfons Emanuel Moller



On December 8, 2016, the Minister of Energy and Mineral Resources enacted the Ministerial Regulation No. 41 of 2016 concerning the Development and Empowerment of Communities through Activities of the Mineral and Coal Mining Sector (“**Permen ESDM No. 41/2016**”). The enactment was deemed necessary to complement the implementation of Article 109 and Article 111 of Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities (“**PP No. 23/2010**”), which stipulates the requirement of further ancillary provisions regarding the development and empowerment of communities (“**PPM**”) surrounding Mining Permit Areas and Special Mining Permit Areas along with the procedures for the imposition of administrative sanctions.

Permen ESDM No. 41/2016 regulates the guidelines for PPM blueprints, PPM programs including the master plan and annual plan, along with the obligation to report to the Minister of Energy and Mineral Resources through the Director General of Mineral and Coal (“**Director General**”), as well as the administrative sanctions for non-compliance. The PPM blueprint is defined under Article 1 point 3 of the Permen ESDM No. 41/2016 as a document that elaborates the strategic planning of integrated development containing the directives of the PPM policy in the provincial regions. Any governor of a province where mining activities take place is required to draft a PPM blueprint to be implemented in that particular area, in a fair and accountable manner according to the local norms. The governor shall also involve relevant regents/mayors by means of consultation and consider the national and regional mid-term development and spatial plans as the basis of drafting the PPM blueprint. The aforementioned blueprint shall contain at least the following:

1. Improvement of the human development index in the particular province/regency/city;
2. Economic development for the communities surrounding the mining areas, including post-mining activities;
3. Sustainable socio-cultural and environment development within the communities surrounding the mining areas;
4. Institutional development of the communities surrounding the mining areas; and
5. Development of infrastructures to support PPM.

The governor shall only enact the blueprint after securing an approval from the Director General, and the blueprint may be evaluated and amended once every 5 (five) years. The third chapter of Permen ESDM No. 41/2016 regulates the PPM Program, which includes the necessary PPM Master Plan and Annual PPM Program, to be drafted by mining companies in accordance with the PPM blueprint while simultaneously preparing the feasibility studies and environmental documents. The communities surrounding the mining areas are allowed to propose their own PPM programs to be included in the PPM Master Plan and Annual PPM Program to the mining companies in question, through the respective governor. The PPM Master Plan must be based on the results of social mapping to respond appropriately to the current conditions of the relevant communities and shall, at least, include health and education, socio-cultural and environment of the communities, infrastructure, financial independence, and institutional communities in support of financial independence. The PPM Master Plan shall be evaluated and/or amended once every 5 (five) years, or whenever the PPM blueprint, feasibility study, or environmental document is amended. Otherwise, drafting of the Annual PPM Program as part of Work Plan and Budget, shall refer to the PPM Master Plan and includes:

1. Details of the annual PPM plans;
2. Annual PPM plan's timeline;
3. Financing of the annual PPM plans;
4. Success criteria;
5. Implementation of the previous annual PPM plan including the obstructions and solutions.

Subsequent to acquiring the approval of the Director General, the mining company shall conduct their own Annual PPM Program by establishing a working unit and drafting a standard operating procedure that shall be submitted to the Director General. Permen No. 41/2016 also regulates the obligation of mining companies to report to the Minister of Energy and Mineral Resources through the Director General (with a copy sent to the relevant mayor/regent) on the implementation of the Annual PPM Program every 6 (six) months, no later than the 30th day after the six-month period ends. Failure to comply with the provisions under this regulation shall be subject to administrative sanctions in the form of written warnings, suspensions of business activity, and/or revocations in mining business licenses.

Non-Fiscal Facilities Imposed on Industry Sector

by Arien Kartika Sari

Following the implementation of Law No. 3 Year 2014 on Industry, the government has issued Government Regulation No. 2 of 2017 on Development of Industrial Infrastructure and Facilities (“GR 2/2017”). This regulation is focused on industrial standardization, the National Industry Information System, and non-fiscal facilities granted to Industrial and Industrial Zone Companies.

In the spirit of creating a competitive industry through standardization of industrial goods and services, GR 2/2017 sets out the rules for industrial standardization that is implemented in the form of the Indonesian National Standard (*Standar Nasional Indonesia* or “SNI”), Technical Specification and Procedural Guidelines.

SNI is typically a voluntary certification, unless stipulated otherwise by the relevant technical authorities. The Ministry of Industry is in charge of supervising all aspects of the implementation of the voluntary and mandatory SNI, either at the factory or market-level. If the report of such supervision shows the industrial goods and/or services to be non-compliant with the mandatory SNI, Technical Specification and/or Procedural Guidelines, the business is obliged to suspend production of such goods/services within 3 days since the notification and to remedy such non-compliance. If such non-compliance is found at the market-level, the business is obliged, at their own cost, to withdraw the sale of such goods within 1 month of the notification, and/or stop any importation of the goods within 3 days. If the goods have a high risk of making a direct negative impact on the safety of consumers, the authority is entitled to immediately withdraw the product from the market. Violation of this obligation may result in an administrative fine of up to IDR 1 billion, temporary closure, suspension, and/or revocation of the industrial license.

On the issue of the National Industry Information System, GR 2/2017 stipulates that every Industrial Company, as well as Industrial Zone Company, must routinely submit data and information regarding their business to the minister of local government through the National Industry Information System. The Minister then will publish such information, except for any information that may harm the Industrial Companies to protect them from a violation of intellectual property and unfair business competition.



Under GR 2/2017, non-fiscal facilities may be given to any industrial companies who have obtained an Industrial Business License (*Izin Usaha Industri*) or an Industrial Zone Business License (*Izin Usaha Kawasan Industri*), and fully paid all tax obligations. Other criteria may apply, such as the commitment to externalize the concept of green industry, export-orientation, location in rural or border areas, optimalization of the use of local goods and/or services, etc. The non-fiscal facilities as set forth in this regulation are as follows:

1. training to improve knowledge and skills of the human resources;
2. professional competency certification;
3. transfer of production rights of a technology for which the patent license is held by the central and/or regional government;
4. supervision of safety for operational activities to ensure the smooth operation of production process (if its considered to be a vital national object);
5. for small and medium-sized businesses, product certification and/or technical standard;
6. development of physical infrastructure for small and medium-sized businesses and Industrial Zone Companies located in rural or border areas; and/or
7. promotional assistance of production results or location.

To apply for non-fiscal facilities, Industrial Companies or Industrial Zone Companies must submit an application to obtain non-fiscal facilities to the Ministry of Industry, technical ministry, governor, and/or regent or mayor as the grantor of such facilities.

New Regulation for Power Purchase Agreements

by Auraylius Christian



On 23 January 2017, the Indonesian Minister of Energy and Mineral Resources (“MEMR”) has promulgated three (3) new regulations, one of them being MEMR regulation No. 10 Year 2017 concerning the Principle of Power Purchase Agreements (“MEMR Regulation 10/2017”). MEMR Regulation 10/2017 applies to all power projects, including geothermal, biomass and hydropower plants, except: intermittent power projects (such as wind and solar, regardless of size), mini-hydro power plants (below 10 Mega Watts), biogas power plants and waste-to-energy power plants. These categories of power plants will be subject to specific regulations issued by MEMR.

MEMR Regulation 10/2017 regulates the staple provisions of the commercial aspect that must be incorporated in all Power Purchase Agreements (“PPA”) between state power utilities (*Perusahaan Listrik Negara* “PLN”) and the private sector (Independent Power Producer “IPP”). The PPA shall contain at least provisions concerning: a. term of PPAs; b. the rights and obligations of the seller (IPP) and buyer (PLN); c. risk allocation; d. performance bond; e. commissioning and Commercial Operation Date (“COD”); f. fuel supply; g. transaction; h. operation control system; i. penalty regarding the performance of the power plant; j. termination of PPA; k. transfer of rights; l. price adjustment requirements; m. dispute resolution; and n. force majeure.

Besides the mandatory provisions above, MEMR Regulation 10/2017 imposes some new requirements to be incorporated in PPAs, as follows:

1. the term of the PPA should be a maximum of 30 years commencing from the Commercial Operation Date (COD);
2. all PPAs should be on a Build-Own-Operate-Transfer (BOOT) scheme. It means at the end of PPA, the IPP should transfer the ownership to the PLN;
3. prohibition to transfer the shares or ownership in power generator until the plant achieves the COD. However, a transfer from IPP or funding sponsor to its at least ninety percent (90%) owned affiliate entity is permitted. After achieving the COD, the transfer of shares in the power generator is only permitted with the approval of the PLN and must be reported to the Government;
4. The PLN will be charged a penalty from the IPP if cannot absorb the electricity due to the PLN error, the amount of penalty will be determined in proportion of investment component; and
5. All dispute must be settled by arbitration. The arbitration resolution shall be final and binding.

Based on the transitional provisions of MEMR Regulation 10/2017, these new requirements above will not apply to: PLN procurement processes where bid closing has already occurred; the PLN has signed letters of intent with the IPP; the PPA has already been signed; or there is any amendment to an existing PPA. The new requirements above must be fulfilled for all relevant power projects where the bid closing has not occurred. MEMR Regulation 10/2017 came into force on the date of promulgation.