



Regulation of the Minister of Energy and Mineral Resources Number 48 of 2017

by Pratiwi Widyastuti



On July 2017, the Minister of Energy and Mineral Resources issued Regulation of Energy and Mineral Resources (EMR) Minister Number 42 of 2017 on the Supervision of Business Activities in the Energy and Mineral Resources Sectors. This regulation only lasts for ten days and was revised on 3rd August 2017 by Regulation of EMR Minister Number 48 of 2017. The previous decree was considered to hamper investors.

This new rule aims to realize good governance and increase the supervision of companies which conduct business activities so as to realize the prosperity of the people while maintaining the investment climate. That is the manifesto of Article 33 Paragraph 2 and 3 of the 1945 Constitution.

There are some particular scopes for governance of this mandate First, in relation to oil and gas. The transfer of interest participation must obtain approval of the EMR Minister (Minister). The transfer of shares which resulted in Direct Control must be held by the Minister through the head of SKK Migas, while the shares transfer which resulted in Non-Direct Control must be reported to the Minister through the aforementioned official. The changes of Director(s) or Commissioner(s) must be reported to the Minister through the Director General of Oil and Gas.

The next scope is electrification. The transfer of shares and the change of Director(s) and Commissioner(s) of Power Plant Business License (IUTPL) holders must be reported to the EMR Minister through the Director General of Electricity.

For mineral and coal, the transfer of shares of the Mining Business License (IUP) or Operator Special Production and the change of Director(s) or Commissioner(s) require the approval of the Minister.

Finally, the geothermal power plant. The transfer of shares for the holder of the Geothermal License (IPB), Power of Exploitation of Geothermal Resources, Contractor of Joint Operations, Contract Exploitation of Geothermal Resources, Exploitation License of Geothermal Resources on the Indonesia Exchange must acquire the Minister's approval after completion of exploration. The transfer of the shares on other Exchanges beside Indonesia must report to the Minister through the Director General of Renewable Energy and Energy Conservation (EBTKE) after completion of exploration and the change of Director(s) or Commissioner(s).

The transfer of shares, the changes of Director(s) and Commissioner(s) in State-Owned Enterprises (SOE) must be conducted in accordance with the law and reported to the Minister.



New OJK Regulation on the Buyback of Shares Issued by Public Companies

by Eduardy Armandana Eddin



On 22nd June 2017, Indonesia's Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") promulgated Regulation No. 30/POJK.04/2017 on Buyback of Shares Issued by Public Companies ("**POJK No. 30/2017**"). The purpose of issuance of the POJK No. 30/2017 is to supersede the Capital Market and Financial Institutions Supervisory Board (*Badan Pengawas Pasar Modal dan Lembaga Keuangan* or "**BAPEPAM-LK**") decree No. KEP-105/BL/2010 on the Buyback of Shares Issued by Issuers of Public Companies, along with Regulation No. XI.B.2 ("**Regulation XI.B.2**")

In essence, POJK No. 30/2017 makes a number of minor alterations to the various provisions such as general provisions for buybacks, information on buybacks, and implementation of buybacks, which were originally set out under Regulation XI.B.2. POJK 32/2017 also stipulates some new provisions in order to provide clarity and certainty as regards the organization of buyback of shares issued by public companies.

Regarding the buybacks, public companies are allowed to buyback their shares but must firstly secure an approval from the General Meeting of Shareholders ("**GMS**"), where they are required to announce the information on share buyback to shareholders at the same time as the GMS announcement to satisfy the requirement of transparency.

The implementation of share buyback should be settled by no later than 18 (eighteen) months after the date of the GMS. Buyback should be carried out through a stock exchange or external stock exchange. A report on the relevant buyback result should be sent to the OJK, specifically in June and De-

cember. Shares resulting from the buyback must subsequently be transferred by complying with the provisions and requirements set out in POJK No. 30/2017. Public companies which are listed on the stock exchange are prohibited from the buyback of their own shares, if the buyback process may significantly reduce the liquidity of the shares on the stock exchange.

Previously, Regulation XI.B.2 did not regulate administrative sanctions; POJK No. 30/2017 stipulates a number of new provisions which relate to administrative sanctions for any party who violates the provisions of this OJK Regulation, including parties who cause such violations. Sanction will be given in the form of:

- a. written warnings;
- b. fines, namely the obligations to pay a certain amount of money;
- c. restriction of business activities;
- d. suspension of business activities;
- e. revocation of business licenses;
- f. annulments of approvals; and
- g. annulments of registration.

Administrative sanctions aforementioned in points (b) to (g) may be imposed with or without being preceded by the imposition of a written warning as mentioned in point (a). As for fines as referred to in point (b), these may be imposed separately or collectively alongside the imposition of administrative sanctions as referred in points (c) to (g). The OJK may administer certain measures towards any party who violates the provisions of Regulation 30/POJK.04/2017.

Bank Indonesia issues Commercial Securities Regulations for the Financial Market

by Jessica Tjendana



Bank Indonesia has just introduced a new regulation Bank Indonesia Regulation (*Peraturan Bank Indonesia - PBI*) No. 19/9/PBI/2017 concerning Commercial Paper Issuance and Transactions within the Financial Market. The purpose of such commercial paper arrangements is for non-bank companies to reactivate short-term financing through the financial markets.

To be able to issue a commercial paper, Article 3 of the PBI, stipulates that a non-bank corporation may issue a commercial paper if: it has issued obligation in Indonesian Stock Exchange in the last 5 years. If the corporation is not listed as a listed company, then the following rules shall apply: it has operated for at least 3 years, it has a minimum equity of Rp 50.000.000.000. Furthermore, Article 4 of PBI also stipulates the Commercial Papers criteria which can be issued. The criteria including: the minimum nominal of each Commercial Paper must at least be Rp 10.000.000.000 or US\$ 1,000,000; the tenor of each Commercial Paper shall be at least 1 month and maximum of 12 months.

In addition, the new regulation is expected to improve the governance of publications and transactions, accelerate the

expansion of financial markets and support the effective transmission of monetary policy.

The new PBI arrangements are also expected to support the creation of a credible CP market. It has thus been stipulated under the principles of CP transaction implementation and their various related obligations that prudential principles and risk management for CP issuers will have to be applied.

The issuance of the PBI is expected to complement existing financial market instruments, so that economic actors who require short-term financing have alternative sources of funding other than bank loans.

Once the Commercial Paper market has been expanded and sufficient market liquidity has been created, it is expected that business financing will become more efficient and thus provide benefits as regard support for the development of the national economy.