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Bank of Indonesia Finalizes Electronic Money Regulation

By: Lie Yessica Susanto

The Bank of Indonesia ("**BI**") has improved the regulation of electronic money by way of the Governor of BI's Regulation Number 16/8/PBI/2014, promulgated on 8th April 2014; this is amendment of the Governor of BI's Regulation Number 11/12/PBI/2009 on Electronic Money ("**PBI 16/8/PBI/2014**").

This finalization of this regulation is considered an important step in synchronizing the provision of electronic money and money transfers and in order to support the healthy growth of the electronic money industry.

Beside that, the use of electronic money is also well received by the community. This is proven by data from Indonesian Bank which shows that the use of electronic money or "e-money", has reached 8.7 billion rupiahs per day with a volume of 420,000 transactions per day.[1] Therefore the new regulation was necessary to accommodate this socio-economic development.

Several features in the existing legislation have been amended by PBI 16/8/PBI/2014, as follows:

a. The licensing of Non-Bank Institutions to issue e-money with a funds transfer feature;

b. The license granting validity period as Principal, Issuer, Clearing Coordinator and/or Final Settlement Coordinator;

c. The utilization of e-money in the management of Digital Financial Services; and

d. Licensing restriction policies in respect of e.g. the Principal, Issuer, Clearing Coordinator and/or Final Settlement Coordinator.

There is also a breakthrough in PBI 16/8/PBI/2014 through Digital Financial Services. The issuing of the Digital Financial Services regulation is demonstrably one of BI 's efforts to improve financial inclusiveness in Indonesia. It aims to provide clear guidance for the e-money issuer in the organization of Digital Financial Services, including third parties who are interested in helping issuers to serve the surrounding communities. In addition, this provision also reassures people that they will be able to enjoy electronic financial service access securely. Digital Financial Services are regulated by Article 24 B to Article 24 G of PBI 16/8/PBI/2014.[2]

PBI 16/8/PBI/2014 also determines administrative sanctions such as reprimands, fines, the suspension of all activities involving electronic money and/or license revocation of the Principal, Issuer, Clearing Coordinator and/or Final Settlement Coordinator in the event of violation of the provisions referred to in Article 33 of PBI 16/8/PBI/2014.

[1] With Electronic Money, There Are 420.000 Transactions Per Day, www.tribunnews.com, April17th, 2014.

[2] www.bi.go.id.

Consumer Complaint Settlement and Services of Financial Services Business Actors

By : Lie Yessica Susanto

The Financial Services Authority/Otoritas Jasa Keuangan ("**OJK**") has issued OJK Circular Letter No. 2/SEOJK.07/ 2014 on Consumer Complaint Settlement and Services of Financial Services Business Actors ("**SEOJK 2/SEOJK.07/ 2014**"). SEOJK 2/SEOJK.07/2014 is published to imple- ment Article 32-39 of the Financial Services Authority Regulation No. 1/POJK.07/ 2013 on Financial Services Business Actors.

Financial Services Business Actors /*Pelaku Usaha Jasa Keuangan* ("**PUJK**") in this case are commercial banks, rural banks, securities companies, investment advisors, custodian banks, pension funds, insurance companies, reinsurance companies, financing institutions, pawn brokers; either in the conventional or the Sharia conduct of their operations. The definition of the 'consumer' in this case are those who put their funds with and/or utilize the services that are provided by the financial services institute i.e. banking customers, investors in capital markets, insurance policy holders, and participants in pension funds.

Consumers can make complaints to PUJK if they suffer any losses due to PUJK's mistakes and negligence. The PUJK must follow up the complaint within, at the latest, 20 working days after the complaint is received. This period may be extended for 20 more days if there are any specific issues as set out in SEOJK 2/SEOJK.07/ 2014. Complaint resolution can be fulfilled by way of an apology, and indemnity if there is any financial loss. In the event that no complaint settlement is reached, the consumer and the PUJK can engage in extra-judicial dispute resolution, or can do so through the courts. Dispute resolution 'out of court' is to be conducted by alternative dispute resolution methods contained in the Alternative Dispute Resolution Institute List, specified by OJK. The PUJK is required to implement the decision of the Alternative Dispute Resolution Institute.

The kind of complaints reported to the OJK concern consumer dissatisfaction about financial losses suffered, and when there is a dispute between PUJK and consumers. Consumers can complain to the OJK in hard copy (on paper) or electronically through the Integrated Costumer Service System Financial Service Sector. The PUJK report can also be submitted to the OJK in hard copy or electronically through the Integrated Costumer Service System Financial Service Sector periodically, every 3 months. The SEOJK 2/SEOJK.07/2014 comes into force on August 6th, 2014.[1]

[1] www.ojk.go.id

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Inspection of Guarantee Institutions

By: Lie Yessica Susanto

The Financial Services Authority/*Otoritas Jasa Keuangan* ("**OJK**") has issued Regulation of the Financial Services Authority No. 7/POJK.05/2014 concerning the Inspection of Guarantee Institutions ("**POJK 7/POJK.05/2014**"), in order to improve the effectiveness of the guidance and supervision of guarantee institutions by inspectors. POJK 7/POJK.05/2014 was enacted on April 8th, 2014.

'Inspectors' under POJK 7/POJK.05/2014 are employees of the OJK or other party appointed by the OJK. The inspected 'Guarantee Institutions' in this case are : the guarantee company, the Sharia guarantee company, the re-guarantee company and the Sharia re-guarantee company. The inspection is aimed at gaining certainty regarding the actual condition of guarantee institutions, examining the compatibility of guarantee institution conditions with prevailing legislation, standards and principles, and to ensure that guarantee institutions are already making efforts to fulfill their obligations to guarantee recipients. The inspection is conducted via the following steps, such as:

a. inspection preparation;
b. inspection execution; and
c. inspection report.

Furthermore, Article 3-4 POJK 7/POJK.05/2014 regulates matters that need to be considered in conducting inspections, including the investigator having to show an inspection warrant and investigator's ID. Without both of these, the guarantee institution is entitled to refuse the inspection. After the inspection has been done, the inspector must produce an inspection results report, which consists of an interim inspection report and a final inspection report. The interim inspection report must be submitted by OJK to the Board of Directors of the guarantee institution no later than 30 days after the inspection. The guarantee institution may file a response within 20 days after the date of the interim inspection report. In the event that there is no response from the guarantee institution, the interim inspection report will be regarded as the final inspection report.

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New Rules on the Negative Investment List (DNI)

By: Indra Prawira

The Negative Investment List ("**DNI**") has been amended by the government under new DNI rules with the provision of a new list of 'closed' and 'open' business fields, with certain requirements in each investment field. This new regulation is expected to increase investment activities in Indonesia.

The Government of Indonesia has issued Presidential Regulation Number 39, 2014 regarding the List of Business Fields Open and Closed to Investment, with Conditions ("**Presidential Regulation No. 39, 2014**") which amends Presidential Regulation Number 36,2010 ("**Presidential Regulation No. 36, 2010**"). Presidential Regulation No. 39, 2014 is divided into three groups of business fields, which are: (1) business fields closed to investment (2) business fields open to investment with certain conditions and (3) business fields open to investment.

Business fields open with conditions are certain business categories that may conduct investment activities with certain requirements; that is, licensed businesses reserved for micro, small and medium enterprises and cooperatives, licensed businesses requiring establishment under a partnership, licensed businesses requiring certain capital ownership, licensed businesses required to be in certain locations and licensed businesses requiring special permits. This regulation stipulates that business fields open with conditions have to fulfil the location requirement, which is governed by prevailing regulations in the spatial and environmental fields.

Under the new DNI, there are several business fields that have had their limitation of capital ownership increased. In the Energy and Mineral Resources sector, the limitation of foreign capital ownership of power plants (above 10 MW), power plant transmission and electricity distribution have been increased up to 100% with the condition that there must be a public-private partnership during the concession period. In the transportation sector, port facility providers may undertake business with up to 95% of foreign capital ownership under a public-private partnership during the concession period. Terminal construction for public facilities is now open for foreign investment with a maximum of 49% foreign capital ownership under the recommendation of the Minister of Transportation. In the health sector, pharmaceutical industries are now allowed to have 85% foreign capital ownership. In the financial sector, venture capital services are now open to an investment of up to 85% foreign capital ownership.

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However, there are some business fields which were previously open to foreign investment, but as amended by the new DNI, are now open only to local capital ownership. Oil and gas drilling services on land are now closed to foreign investment and only allow 100% of local capital ownership. Notwithstanding that, oil and gas offshore drilling services are still allowed to have foreign capital ownership of up to 75%. Oil and gas supporting services are now closed to foreign investment under the new DNI. The Government also limits and reduces foreign capital ownership in the communication and informatics sector. Content services and call centres for value-added telephone service providers are now limited to 49% instead of the requirement of partnership as specified under the previous DNI. Data communication system services and internet communication services are now reduced from 95% and 65% of foreign capital ownership, respectively, to the limitation of 49% of foreign capital ownership.

Furthermore, there are several business fields, which were not specified in Presidential Regulation 36, 2010, included in the new DNI as business fields open to investment with certain conditions. Oil and gas construction services and survey services are now governed under the new DNI and open to foreign investment with certain limitations in their capital ownership, with a maximum of 75% foreign capital ownership for *platform construction*, a maximum of 49% foreign capital ownership for *spherical tank construction* and *drainage pipe offshore installation*, a maximum of 75% foreign capital ownership for oil and gas surveys and 95% foreign capital ownership for geothermal surveys. In the public works sector, foreign investment of up to 95% capital ownership is allowed . In the trade sector, future trading services are allowed to have foreign capital ownership of up to 95%.

The matrix of amendment of the DNI rules is described as follow:

Matrix of Amendment of DNI Rules

No.	Previous DNI (Perpres 36/2010)			New DNI (Perpres 39/2014)		
	Sector	Closed	Open for Investment with conditions	Sector	Closed	Open for Investment with conditions
1	Agriculture	1	18	Agriculture	1	19
2	Forestry	2	34	Forestry	2	23
3	Maritime and Fishery	0	17	Maritime and Fishery	0	11
4	Energy and Mineral Resources	0	18	Energy and Mineral Resources	0	13
5	Industrial	4	41	Industrial	3	36
6	Defense	0	3	Defense	0	4
7	Security	0	3	Security	-	-
8	Public Housing	-	-	Public Housing	0	0
9	Public Works	0	6	Public Works	0	6
10	Trade	0	11	Trade	0	11
11	Culture and Tourism	5	27	Tourism and Creative Economy	1	15
12	Transportation	7	25	Transportation	5	23
13	Communication and Informatics	1	13	Communication and Informatics	1	11
14	Financial	0	12	Financial	0	6
15	Manpower and Transmigration	0	5	Manpower and Transmigration	0	5
16	Banking	0	7	Banking	0	4
17	Education	0	4	Education and Culture	2	4
18	Health	0	27	Health	0	25
Total		**20**	**274**	**Total**	**15**	**216**

This Presidential Regulation No. 39, 2014 revoked Presidential Regulation No. 36, 2010 and came into effect on 23 April 2014. However, provisions of this presidential regulation will not eliminate the terms and conditions for the conduct of business activities stipulated by ministry and governmental institutions in the scope of the investment.

New Regulations of the Electricity and Energy Utilization Sector

By: Indra Prawira

The Director General of Electricity and Energy Utilization of the Ministry of Energy and Mineral Resources has issued three new regulations in relation to the electricity sector in Indonesia.

The new regulations are as follows: Government Regulation Number 23 of 2014, which is an Amendment of Government Regulation Number 14 of 2012 regarding business activities in electricity supply ("**GR No. 23 of 2014**"), the Ministerial Regulation of the Ministry of Energy and Mineral Resources Number 10 of 2014 regarding the procedure for coal supply and the determination of the price of coal for the Mine-Mouth Power Plant ("**Ministerial Regulation of ESDM No. 10 of 2014**"), and the Ministerial Decree of the Ministry of Energy and Mineral Resources Number 2186.K/91/MEM/ 2014 regarding the special assignment of PT PLN in order to streamline the process of land procurement for electricity supply ("**Ministerial Decree of ESDM No. 2186 of 2014**").These regulations have been issued in order to increase investment in the electricity sector.

The amendment to the previous regulation, GR No. 23 of 2014 includes regional government in that it applies to a general electricity plan which also allows new business entities to be established by developers in the same location as the operator license holder, to escalate capacity of mine-mouth power plants. Ministerial Regulation of ESDM No. 10 of 2014 governs the procurement of coal to develop mine-mouth power plants based on a coal purchase agreement between the mining company and the mine-mouth power plant company. Moreover, this regulation also stipulates the coal pricing for the mine-mouth power plant, which is determined by coal's basic price and its escalation. In order to complement the delivery of electricity supply and expedite its processing, Ministerial Decree of ESDM No. 2186 of 2014 has been issued to govern the special assignment of PT PLN and to speed up the process of land procurement in connection with electricity supply.

According to Director General of Electricity and Energy Utilization, the total capacity of the p ower plants installed last year reached 49 Gigawatts, which consisted of 72 percent of PLN power plants, 21 percent of Independent Power Producers (IPP), 4 percent of Private Power Utilities (PPU) and 3 percent of Non-fuel Oil Operation Licensees. It is expected that the portion of PPU and Non-Fuel Oil Operation Licensees will increase to 12 percent by the end of 2018.This enhancement is expected to arise from unallocated projects, which constitutes projects that have not been determined by a developer or a project fund that has not yet been set up.

In order to demonstrate how unallocated projects will be handled, the government has drafted a regulation on Power Wheeling. This regulation enables the transmission signal asset to be utilized optimally by all parties who do business in the electricity supply sector. It also streamlines the Power Wheeling process in Indonesia. Furthermore, the government has attempted to diversify primary energy in power plants. Improvement of energy mixture in power plants will be implemented through optimization of gas utilization, enhancement of coal utilization (including that of the mine-mouth), development of renewable energy plants, giving priority to gas and coal to decrease the dependency on fuel oil in power plants, as well as coal utilization as the plant base load and gas as plant peak load.

These regulations have been instituted by the Director General of Electricity and Energy Utilization of the Ministry of Energy and Mineral Resources, as announced in its press release on 9 May 2014, and has been in effect since April 2014.

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Procedures for Granting Business Licenses and Industrial Area Expansion Licenses

By: Lie Yessica Susanto

On February 13, 2014, the Minister of Industry issued the Minister of Industry Regulation Number 05/M-IND/PER/2/2014, entitled Procedures for Granting Business Licenses and Industrial Area Expansion Licenses ("**Permen Industri 05/M-IND/PER/2/2014**").

Permen Industri 05/M-IND/PER/2/2014 was issued to implement Article 17 paragraph (3), Government Regulation No. 24 of 2009. Permen Industri 05/M-IND/PER/2/2014 determined that any company conducting industrial business area activity must have a business license which is valid for the duration of their operations. Companies that engage in the development and management of industrial areas ("**Industrial Area Company**") can take the form of BUMN, BUMD, cooperatives, or private entities.

Article 3 Permen Industri 05/M-IND/PER/2/2014 stipulates that authorities permitted to grant business licenses and industrial area expansion licenses are:

- the Regent/Mayor for industrial areas located in the regency/municipality;
- the Governor for industrial areas located across the regency/municipality;
- the Head of BKPM who receives a delegation from the Minister of Industry for foreign investment and investors who use foreign capital.

Furthermore, Article 9 stipulates that to obtain the business license, the Industrial Area Company must first obtain the principal license. The requirements of an application to obtain the principal license is set out in Article 10 Permen Industri 05/M-IND/PER/2/2014. If the specified requirements have been completed, authorities referred in Article 3 Permen Industri 05/M-IND/PER/2/2014 must issue principal approval no later than 5 working days from receipt of the principal license application.

An Industrial Area Company which already has a business license and wishes to conduct land expansion, must first obtain an industrial area expansion license. Industrial area expansion licenses can be obtained on condition that the Industrial Area Company already has an environmental license, location license, and other requirements specified in Article 18 Permen Industri 05/M-IND/PER/2/2014. The procedure for granting an industrial area expansion license is specified in Article 19 Permen Industri 05/M-IND/PER/2/2014.

The rights and obligations of the Industrial Area Company is stipulated in Article 21-22 Permen Industri 05/M-IND/PER/2/2014. Beside that, Article 7 Permen Industri 05/M-IND/PER/2/2014 also stipulates that an Industrial Area Company must provide land for micro, small, and medium business activities on at at least 2% of its land area.

In the event that the Industrial Area Company does not fulfill its obligations as set out in Permen Industri 05/M-IND/PER/2/2014, the Industrial Area Company may be liable for sanctions, such as : a warning, suspension, or revocation of business licenses and expansion licenses, in accordance with the severity of their breach as stipulated in Article 29 Permen Industri 05/M-IND/PER/2/2014. Permen Industri 05/M-IND/PER/2/2014 has been in effect since February 17, 2014.

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