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The Collection of Funds from Palm Oil Business Activities

by Dehlia S. W.

In the past two months, President Joko Widodo has signed Presidential Regulation No.61/2015 on the Crude Palm Oil Supporting Fund (CPOS Fund). According to Finance Minister Bambang P.S. Brodjonegoro[1], the establishment of a special public service agency (BLU)[2] is the solution to business grievances due to the current account deficit. BLU will collect and manage a new levy on the export of palm oil and so offers a better mechanism to help develop the palm oil industry. Funds collection from palm oil businessmen will be achieved by a levy and/or contributions on exports of palm oil and its derivatives.

In the context of the payment of levies, BLU must coordinate with the Ministry of Trade to appoint a surveyor for verification and technical surveillance in accordance with prevailing laws and regulations. The verification or technical surveillance results compiled by the surveyor must be set forth in a surveyor's report. The levy payment must be in Rupiah and paid via a nominated bank account in cash.

The levy payment must be made after the export custom is declared to the Customs Office. Receipt of levy payment must then be delivered to BLU and the surveyor.

The surveyor's report may be published only once BLU and the surveyor has received and examined the payment receipt. The surveyor's report is to be used as an additional customs document. In addition, Regulation No. 61/2015 contains a stipulation to the effect that contributions are to be determined upon agreement between BLU and the palm oil businessmen to develop the palm plantation in a sustainable way. Only palm oil companies are liable for contributions, not palm oil plantations. Furthermore, article 11 states that the fund is to be used in favor of: (i) the development of human resources in the palm oil business; (ii) research and development concerning palm oil; (iii) the promotion of palm oil; (iv) the rejuvenation of the palm oil industry; (v) the palm oil industry infrastructure. Fund utilization within this framework also includes the incorporation of palm oil in essential food products, downstream palm oil industry, and as well as the provision and utilization of palm oil in bio-fuels, such as bio-diesel.

Under this Regulation, the administrative sanction for non-payment or underpayment of levies and contributions by palm oil businessmen will be a prohibition on export. The procedures for the imposition of sanctions is regulated by the Ministry of Trade.

[1] http://www.kemenkeu.go.id/Berita/blu-dana-kelapa-sawit-jawaban-atas-keluhan-dunia-usaha

[2] http://www.thejakartapost.com/news/2015/06/09/palm-oil-levy-collector-be-established-next-week.html

OJK requires Indonesian Conventional Banks to publish Bank Reports

by Nirmala Adisti

The Financial Services Authority ("OJK") has issued regulation No. 6/POJK.03/2015 ("POJK 6/POJK.03/2015") entitled Transparency and Publication of Bank Reports, which has been effective since 1 April 2015. By this regulation, the OJK obliges Indonesian conventional banks to compose, submit and publish a 'monthly publication report' in order to enhance the transparency of a bank's financial condition and performance. POJK 6/POJK.03/2015 virtually reflects one of the OJK core missions, which is to ensure all activities in the financial services sectors are in order, just, transparent and accountable.

Based on POJK 6/POJK.03/2015, the bank report must comprise the following documents:

1. Monthly Publication Report
   Pursuant to Chapter II POJK 6/POJK.03/2015, a monthly publication report consists of a statement of financial position, profit and loss report, and other comprehensive income and commitment and contingency reports. The publication must occur at the end of the month, one month after the present end of month report. In this regard, a bank is obliged to publish the monthly publication report on their own website and the OJK online reporting system. If the report via the OJK online system has not appeared, the bank is obliged to convey the monthly publication report through the system for Central Office Reports of Conventional Banks ("Laporan Kantor Pusat Bank Umum").
2. Quarterly Publication Report
   According to Chapter III POJK 6/POJK.03/2015, a quarterly publication report is a report of the last positions in the months of March, June, September and December. A quarterly publication report consists of a financial report, financial performance information, shareholder and management structure information,Sharia Supervisory Board information for Sharia Conventional Banks, and any other information required by the OJK.
   A Bank is obliged to publish a quarterly publication report in at least 1 (one) newspaper in the Bahasa Indonesian language and on the bank's website. Similar to a monthly publication report, the bank is obliged to report via the OJK reporting system or Laporan Kantor Pusat Bank Umum. Indonesian conventional banks should take note that they must submit evidence of publication in a newspaper no later than 2 (two) working days after the publication takes place.
3. Annual Publication Report
   The annual publication report referred to in POJK 6/POJK.03/2015 is a report for the final position of the month of December. According to Article 24 POJK 6/POJK.03/2015, an annual publication report prepared by a bank must contain at least the following documents:
   a. General Information
      Article 24 paragraph 2 stipulates that general information in an annual publication report must comprise at least the management structure, including the Sharia Supervisory Board for Sharia conventional banks, share ownership, bank business development and the bank business group, including if there is an expansion to the Sharia Business Unit, strategies and policies applied by bank management, including the Sharia Business Unit (if there is any) and management report that contains information regarding the bank management, including Sharia Business Unit (if there is any).
   b. Financial Report
      Financial Report in an annual publication report must contain at least a financial position statement, profit and loss statement and other comprehensive income, equity changes report, cash flow report and notes to the financial statements, including information regarding commitment and contingency.
   c. Financial Performance Information
      Financial performance information must contain the calculation of minimum capital obligation provisions, the amount and quality of productive assets and reserve of declining value losses, the bank financial ratio, along with spot and derivative transactions.
   d. Capital Disclosure and Risk Management practices applied by the bank, to cover at least risk variety, potential losses encountered by the bank and risk mitigation, set out in the rules about capital and risk management.
   e. Any other disclosure as provided in financial accounting standards.
   f. Any other information required by OJK.
4. Other Publication Report.
   Under POJK 6/POJK.03/2015, an other publication report covers the reporting of basic credit interest rates and any other publication reports required by the OJK in accordance with financial industry necessity and development. In this matter, a bank is obliged to publish a report of basic credit interest rates in a newspaper in the Bahasa Indonesian language at least 7 (seven) working days after the end of March, June, September and December.

Due to its compulsory nature, a bank which does not comply with the publication of such bank reports will subject to numerous sanctions. Under POJK 6/POJK.03/2015, either failing to publish the bank report or publishing a report which does not accommodate the requirements under POJK 6/POJK.03/2015 and/or accounting standards will be sanctioned by written warning and/or administrative sanctions. The administrative sanctions could be in the form of a written warning, a reduction of 'bank healthiness' level, the coagulation of certain business activities, and/or inclusion of shareholders, members of board of directors, commissioners or bank executive officers into the list of names that are prohibited to serve as controlling shareholders, bank owners, members of board of directors, commissioners or bank executive officers. Alongside administrative sanctions, a bank that violates the time-frame to publish such bank reports or fails to comply with the requirements set out under POJK 6/POJK.03/2015 will also be subject to a significant fine ranging from Rp500.000 to Rp100.000.000.

Bank Indonesia's Amendments to Regulations concerning Foreign Currency Transactions

by Robin Setiawan

In early June 2015, the Central Bank of Indonesia issued Bank Indonesia Regulation No. 17/7/PBI/2015 ("**PBI/17/7/ 2015**"). Besides PBI/17/7/2015, Bank Indonesia ("**BI**") also revised two other regulations relating to foreign currencies and foreign exchange markets, among others, PBI/16/16/ 2014 and PBI/5/13/ 2003. This concrete step towards improving the relevant provisions of foreign exchange transactions against the Rupiah and the Net Open Positions (NOP) of commercial banks has been achieved through the issuance of the following conditions:

1. PBI/17/2015 as amendment of BI Regulation No. 16/16/ PBI/ 2014 regarding Foreign Exchange Transactions against the Rupiah between Banks and Domestic Parties
2. PBI/17/2015 as amendment of BI Regulation No. 16/17/ PBI/ 2014 regarding Foreign Exchange Transactions against the Rupiah between Bank and Foreign Party
3. PBI/17/2015 as fourth amendment of BI Regulation No. 13/PBI/2003 regarding Net Open Positions for Commercial Banks

According to BI Information, the amendment of foreign currency regulations is to accelerate the deepening of the domestic foreign exchange market (forex). The revisions serve to ensure the availability of adequate liquidity, ease of transaction execution, reasonable pricing and the minimization of risk in order to maintain economic stability. The amendments to this new regulation aim among other things to support economic actors in their performance of hedging transactions, to mitigate the risks involved and to maintain foreign currency liquidity.

In the amendment of the Regulation on Foreign Exchange Transactions against the Rupiah between Banks and Domestic Parties, the definition of derivative transactions is expanded. Derivative transactions used to comprise forms of forwards, swaps and options only. According to the amended provision, derivative transactions now include cross currency swaps (CCS) or an agreement between two parties to exchange funds with interest in the different currencies. Other amendments to the regulation concern the addition of certain underlying transactions as regulated in foreign exchange transactions against the Rupiah, namely the inclusion of estimates of revenue (income estimate) and the estimated costs (expense estimate) of trade and investment in the underlying transactions. In addition, credit or bank financing can also be underlying derivative transactions.

The amendment of the Regulation on Foreign Exchange Transactions against the Rupiah between Banks and Foreign Parties eliminates the minimum period requirement for derivative transactions by foreign parties. It aims to provide certainty for foreign parties to optimize derivative instruments as hedging instruments of investment in Indonesia. There is also an amendment of the definition of and additions to the underlying transactions, as well as amendments to other BI Regulations.

Bank Indonesia aims for all such amendments to support efforts to increase the capacity of trade and investment in the country, through the increased flexibility of transactions by investors and economic actors. The adjustments were also made prudently and taking into account the impact on financial system stability. Banks are required to meet the arrangements related to the mitigation of risk, which have also been stipulated by the banking authority. BI as a mandated institution to achieve and maintain the stability of the exchange rate and the financial system continues to accelerate the deepening of the domestic foreign exchange market through increasing flexibility for market participants conducting foreign exchange transactions.

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Financing of Plantation Business by Way of Fund Collection

by Rio Rahmat Hidayat

Plantations are one of the strategic commodities that greatly affect the Indonesian economy. Hence, the government issued Law No. 39 Year 2014 concerning Plantations ("Plantation Law") that effectively commenced on 17 October 2014, and revoking Law No. 18 Year 2004.

Referring to Article 93 of the Plantation Law, financing a plantation business can be performed by the government using its own state budget or by business practitioners in the field of plantation business by collecting funds.[1]

To supplement the Article referred to above, the government issued Regulation No. 24 Year 2015 concerning Plantation Fund Collection ("GR No. 24/2015") that effectively commenced on 25 May 2015. The main purpose behind the issuance of the GR No. 24/2015 is to organize the collection of funds undertaken by business practitioners, communities and financial institutions to support sustainable development in the plantation sector covering coconut palms, coconut, rubber, coffee, cacao, sugar cane and tobacco.[2]

According to Article 5 of GR No. 24/2015, the funds from business practitioners as mentioned above can be sourced from contributions that must be determined by common consent between the Badan Pengelola Dana ("Fund Management Agency") and the business practitioner themself. Moreover, the fund can also be sourced from the levies imposed by plantation business practitioner that exports commodities, plantation business practitioner that conducts raw material industry and exporters of plantation commodities.

Plantation funds raised shall be used for:

1. human resource development;
2. research and development;
3. promotions;
4. rejuvenation; and
5. plantation facilities and infrastructure.

In order to support the aims of Article 93 of the Plantation Law, the government must form a Fund Management Agency for 1 (one) or joined plantation strategic commodities to conduct planning and budgeting, raising, managing, distributing, administering and supervising funds.

The fund management can be carried in the form of investment in blue chip stocks traded on the stock exchange, government or private bonds and/or deposits in the national bank by the manager.

In terms of supervision, the Fund Management Agency must provide an evaluation result with recommendations to the minister or the governing agency as a basis for imposing administrative sanctions on business practitioners who do not fulfil their levy obligations.

In terms of administrative sanctions, an export prohibition will be imposed in the event that business practitioners fail to comply with their levy obligations.

[1] Undang-Undang Republik Indonesia Nomor 39 Tahun 2014 tentang Perkebunan.

[2] Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 2015 tentang Penghimpunan Dana Perkebunan.

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