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Registration of Fiduciary Instruments

by Athalia Devina

The government has issued a new regulation regarding the registration of fiduciary instruments, - Government Regulation No. 21 of 2015 on the Procedures for the Application of Fiducia and the Cost for drafting of Fiduciary Deeds ("**GR No. 21/2015**"). GR. No. 21/2015 replaces Government Regulation No. 86 of 2000 on the Procedures for the Application of Fiducia and the Cost for drafting of Fiduciary Deeds ("**GR. No. 86/2000**").

Under GR No. 21/2015, the application to register a fiduciary instrument must be submitted to the Ministry of Law and Human Rights ("**MOLHR**") which now proceeds via the fiduciary registration office through an online system. By contrast, under the previous GR No. 86/2000, the registration was done manually. The application to register a fiduciary instrument must contain the following:

1. identity of both the holder and the grantor of the fiduciary instrument;
2. date and number of the fiduciary deed as well as the name and address of the notary who drew up the fiduciary deed;
3. data of master agreement, i.e., the loan agreement whose payment is guaranteed by fiducia;
4. description of the fiduciary object; and
5. value of the fiduciary object.

GR No. 21/2015 stipulates that the application to register a fiduciary instrument must be submitted within 30 days as of the execution of the fiduciary deed. After submitting an application to the MOLHR, the fiduciary holder will receive a receipt of registration and will have to pay the registration fees to the nominated bank. Furthermore, the fiduciary guarantee will be recorded electronically upon payment of the fees. Registration will become effective once the payment has been made and a certificate has been issued, upon which the fiduciary instrument will be deemed valid. In case of errors or mistakes in the registration process, the applicant may submit a correction request within 30 days of the issuance of the certificate.

Based on Article 16 GR No. 21/2015, a fiduciary deed is terminated by reason of the debts based on the governing agreement having been settled; waiver of the fiduciary right by the grantor; or the object which serves as a security having been destroyed. GR No. 21/2015 requires the grantor to notify the MOLHR in writing within 14 days of the termination date.

The fee for preparing a fiduciary deed in accordance with article 18 of GR No. 21/2015 is as follows:

No.	The amount of guarantee	The cost of deed
1.	Up to IDR 100 million	Maximum 2.5% of the debt value
2.	Over IDR 100 million up to IDR 1 billion	Maximum 2.5% of the debt value
3.	Above IDR 1 billion	Based on agreement between the notary and the parties, however 1% is the maximum of the debt value

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Deregulation of the Industrial Business License

by Delvi

Related to Article 108 of Law No. 3 of 2014 concerning Industry ("I**ndustry Law**"), on 23 December 2015, the government enacted Government Regulation No. 107 of 2015 regarding the Industrial Business License ("**GR 107/2015**"). According to Article 101 paragraph (1) Industry Law, every business should have an industrial business license (*Izin Usaha Industri* or "**IUI**").

Pursuant to article 6, one IUI only applies to one industrial company which has business in one business classification in accordance with the Indonesian Standard Industrial Classification ("**ISIC**") and occurs in one location of industry, having several business industries in one integrated production unit with the ISIC which is different in one industrial location; or having several business industries in one business classification, in accordance with the ISIC, which is in several locations in one industrial area.

An IUI shall only be given to an industrial company that is located in an industrial area. The exceptions to this are as follows: an IUI may be given to an industrial company that is not located in the industrial area, if the company is located in a city/district which has no industrial area; or it has an industrial area which has been exhausted; or the company is categorized as a special industry and/or industry that needs a special location; or the company is classified as a small or medium industry with no massive environmental impact.

The operation of industry includes: (a) small industries; (b) medium industries; and (c) big industries. The classification is based on the amount of labor and the value of investments, excluding land and buildings. Additions to or deductions of the number of employees in a company will cause amendment of the IUI classification and shall change the company's IUI to comply with the classification. All capital in small industries must be owned by the Indonesian Citizen and its business must be categorized as a business that is open or conditionally open for investment, in accordance with the regulation in the sector of investment.

IUIs are issued by the Minister or governors through the One Stop Integrated Services, or the regent/Mayor through One Stop Integrated Services, according to its authorities. Prior to submission of IUI application, the company must complete preparation and development activities, procurement, equipment installation, and other preparation, to be ready to perform activities in the field of industry, and comply

with the requirements concerning the location. The industrial company that already has an IUI may expand its business with no obligation to obtain an Expansion Permit. The Expansion Permit is needed if such expansion entails use of natural resources that are required to have an *Analisis Mengenai Dampak Lingkungan* or AMDAL. The Expansion Permit will be given to industrial company which has completed the implementation of preparation and development activities, procurement, installation equipment, and other preparation in the framework of extension.

To ensure the implementation in GR 107/2015, the government has established sanctions for those who do not adhere to this regulation. Pursuant to Article 30, in the case of an industrial company that does not have an IUI, sanctions in form of a written warning until temporary closure may be imposed. Further, the company will be given two written warnings over a period of two years in which it does not perform its business activities, and if the company still does not perform its business activities within a period of three years after the issuance of IUI, the IUI will be revoked and declared invalid.

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Realisation Report on the Utilisation of Public Offering Proceeds

by Febi Jaya Conggih

In order to simplify the submission of realisation reports on the utilisation of public offering proceeds, and harmonize it with the submission of financial statements for the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**"), the OJK has issued Regulation No. 30/POJK.04/2015 concerning the Realisation Report on the Utilisation of Public Offering Proceeds ("**POJK No. 30/2015**"). This regulation will come into force on 16 April 2016 and revoke the previous Chairman of Capital Market Supervisory Board's Directive No. KEP-27/PM/2003 and its attachment, Rule No. X.K.4 ("**Bapepam Rule No. X.K.4**").

According to POJK No. 30/2015, reports must be submitted to the OJK twice a year, on June 30 and December 31. The reporting obligation must be fulfilled until such time as the entire proceeds of the public offering have been exhausted. This represents a new regulation in the reporting requirement, as previously, reports had to be submitted on a quarterly basis. The first report should be submitted on the first reporting date after (i) the transfer date of securities in a public offering of shares, debt securities and/or sukuk, or (ii) the allotment date for a capital increase conducted through a rights issue.

For a public company, the utilization of proceeds from a public offering must also be accounted for to the Annual General Meeting of Shareholders ("**GMOS**") as part of the meeting's agenda. Such an accountability report should, at a minimum, contain information on:

a. the total proceeds of the public offering or rights issue;
b. the total costs related to the public offering;
c. the proceeds that have been used and what they were used for; and
d. unused proceeds and the reasons for their not being used.

The previous Bapepam Rule No. X.K.4 is silent as to when a change in the utilisation of proceeds should be reported to the OJK. Contrarily, under POJK No. 30/2015, an Issuer or public company should report a proposed change in the utilisation of proceeds at the same time as the notification of the GMOS's agenda to the OJK.

Pursuant to Article 13 POJK No. 30/2015, the unused proceeds of a public offering should be invested in the name of the Issuer in safe and liquid financial instruments. The Issuer is also required to disclose the nature and locations of such investments, the applicable interest rate or profit-sharing arrangements (*imbal hasil*), and whether there is any relationship of affiliation between the company and the party in which the unused proceeds are invested. Pursuant to the Elucidation on POJK No. 30/2015, safe and liquid financial instruments include government/sovereign bonds and time deposits. In addition, the unused proceeds may not be collateralized.

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The New Regulation Concerning Industrial Areas

by Febi Jaya Conggih

In order to face global competition and improve investment appeal in the industry sector, the Indonesian government has issued Government Regulation No. 142 of 2015 on Industrial Areas ("**GR No. 142/2015**"). GR No. 142/2015 became effective on December 28 2015 and replaced Government Regulation No. 24 of 2009 regarding Industrial Areas ("**GR No. 24/2009**"). The issuance of this regulation is expected to increase investment in the development and management of industrial areas.

GR No. 142/2015 provides that tax incentives will be granted automatically to developers in the region and industry under categories of the industrial development estates (*Wilayah Pengembangan Industri* or "**WPI**"). The regulation establishes four different categories of WPI. Developed WPI in Java; Developing WPI in Southern Sulawesi, Eastern Kalimantan, parts of Nothern Sumatra (other than Batam, Bintan and Karimun), and Southern Sumatra; Potential I WPI includes Northern Sulawesi, Western Kalimantan, Bali, and Nusa Tenggara, and Potential II WPI in Papua and West Papua. These classifications are used to determine the amount of incentive that will be given to each respective WPI.

According to Article 43 of GR No. 142/2015, the regional incentives will be in the form of tax holidays and tax allowance or exemptions on regional taxes and/or levies. The regional taxes and levies include land and building acquisition fees (*Bea Perolehan Hak Atas Tanah dan/atau Bangunan* or BPHTB), land and building tax (*Pajak Bumi dan Bangunan* or PBB) and street lighting tax (*Pajak Penerangan Jalan or PPJ*).

Futher, GR No. 142/2015 regulates the procedures for the Industrial Area Business License (*Izin Usaha Kawasan Industri or IUKI*) and Principle License (*Izin Prinsip* or IP) that replaces Principle Approval. Under GR No. 142/2015 the Principle License is valid for 3 years and can be renewed twice. GR No. 142/2015 also states that the industrial company must complete the application of an enviromental license and traffic impact statement (*Analisis Dampak Lalu Lintas* or ANDALALIN) in accordance with the provision of Article 19.

Another thing to consider in GR No. 142/2015 is the addition of further obligations of the industrial area company. The industrial area company is obliged to provide land for small and medium industries. Besides this, the industrial company is obliged to build its factory or plant no longer than 5 years commencing from the land purchase or rent. In addition to this provision, an industrial company that has a minimum of 20 hectares of land may submit an application to become an industrial area no later than 2 years after the effective date of GR No. 142/2015.

GR No. 142/2015 also adds some provisions covering the industrial areas standard, industrial estates committee, as well as sanctions for the industrial company and the industrial area company that deliberately performs an act that is contrary to the provisions of the legislation.

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