



# Amendment to OJK Regulation Regarding Transparency and Publication of Bank Reports

by Eivan Hadhy Prabowo

On 12 August 2016, the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or the "OJK") issued regulation No. 32/POJK.03/2016 regarding the amendment of OJK Regulation No.06/POJK.03/2015 on the Transparency and Publication of Bank Reports ("POJK No. 32/POJK.03/2016"). The purpose of the issuance of POJK No. 32/POJK.03/2016 is to complement the previous regulation. Note that whilst most provisions remain unchanged, the new regulation has, however, added more provisions.

In accordance with OJK Regulation No. 6/POJK.03/2015, conventional banks are required to publish a monthly report, quarterly report, annual report, and other report as stated on Article 3 (1). Previously the quarterly report is limited to including the following:

- a. Financial statement;
- b. Financial performance;
- c. Composition of shareholders;
- d. Board of directors; and
- e. Sharia commissioner for sharia bank.

In order to complement this provision, POJK No. 32/POJK.03/2016 stipulates that the bank quarterly report must also include the board of commissioners and quantity of risks exposure on their respective reports. This provision shall become effective on June 2017. Conventional banks that are obliged to compose and publish a Liquidity Coverage Ratio ("LCR") will also be required to add LCR on their quarterly reports, starting from September 2016. The LCR Report includes a quantitative report in the form of a calculation and value of the LCR.



POJK No. 32/POJK.03/2016 also stipulates that banks are required to publish Information of material facts as an 'other report'. The Information of material facts include important and relevant information. The bank is required to publish this report on their website and submit it report to the OJK within 2 working days after the acceptance of the Information of material facts by the bank.

# The New Indonesian Patent Law

by Ricky Hasiholan



The new Indonesian patent law has recently been enacted. It is the Law No. 13 of 2013 on Patents (the “**New Patent Law**”) which became effective on 26 August 2016. It replaces the previous Patent Law No. 14 of 2001 (the “**Previous Patent Law**”). The New Patent Law provides patent holders with some solutions to the shortcomings of the current patent framework and registration procedures. In addition to some improvements to the Previous Patent Law, the New Patent Law also introduces several new provisions to protect local genetic resources and traditional knowledge, and to reward inventors for any invention produced in official service with government agencies.

In the New Patent Law, all administration processes are addressed to and/or held by the Minister of Law, such as - but not limited to - patent requests, registration, notification on lack of documents, announcement of the patent requests, or objection filing. Patents are given on request. Based on Article 24 Paragraph (4) of the New Patent Law, the request which is addressed to the Minister can be submitted electronically/online through the Directorate General of Intellectual Property’s official website or manually to the Minister of Law and Human Rights.

Based on Article 4 of the New Patent Law, invention does not include aesthetic creations, scheme, rules and methods for performing activities that involve mental activity, games and businesses, rules and methods that only contain a computer program, presentation of the information and discovery in the form of a new use for an existing and/or well-known product; and/or a new form of the compound that already exists and does not increase the efficacy and has no significant differences related to the chemical structure of the compound that is already known.

Moreover, as regulated by Article 26 of the New Patent Law, if the invention relates to and/or is derived from genetic resources and/or traditional knowledge, the origin of genetic resources and/or traditional knowledge

should be clearly and correctly specified in the description. This is to protect the local genetic resource and/or traditional knowledge from another country’s claim.

Under the old law, annuities could be paid up to three years from the due date. If annuities are not paid within three consecutive years, the patent would be deemed null and void. If the patent was allowed to passively lapse due to non-payment of annuities, a patentee is still obligated to pay the outstanding annuities even though the patent is null and void. Under the New Patent Law, a patent will be considered null and void if annuities are not paid by the due date. However, an extension of up to 12 months can be requested.

The New Patent Law also includes the scope of a simple patent protection. The scope of simple patent protection has been expanded to include new inventions or the development of an existing process or products. Previously, simple patents were restricted to products. As stipulated in the explanation of Article 3 Paragraph (2) of the New Patent Law, *‘Simple patent granted to an invention which is a product which is not only technically different, but it should also have a function/usability that is more practical than the previous invention resulted from its shape, configuration, construction, or component that includes tools, goods, machinery, composition, formula, use, compound, or the system. Simple patent also granted to an invention in the form of a new process or method.’*

The New Patent Law also strengthens the role of Indonesian IP Consultants. Later, patents originating abroad to Indonesia must pass through the stage of registration, and the consulting and maintenance of Indonesian IP Consultants. This provision surely gives opportunities to the IP Consultants to be involved in many projects concerning Patents. Besides the IP Consultants, the New Patent Law also gives the Patent Appeal Commission a broader range of authorities which are to receive, examine, and decide on appeal requests for application rejection, for correction on description, claim, and/or image after the application is granted, and also appeal requests of Patent decisions.

Article 12 of the New Patent Law stipulates that the patent holder on an invention generated by an inventor in the employment relationship is the contracting party, unless agreed otherwise, and further, Article 13 stipulates that the patent holder on an invention generated by an inventor in official relations with government agencies are referred to government agencies and inventor, unless agreed otherwise. However, those inventors who are working for the government will be entitled to receive reasonable compensation from non-state tax revenue for the patent on what he/she invented; and those inventors who are working for a company will be entitled to receive reward based on the agreement made by the employer and inventor, taking into account the economic benefits derived from the invention.

# The New Regulation Regarding the Issuer's Annual Report

by Alfons Emanuel M.

On 29 July 2016, the Indonesian Financial Services Authority ("OJK") issued OJK Regulation No. 29/POJK.04/2016 on Annual Report of Issuer or public company ("POJK No. 29/POJK.04/2016"). Previously this matter was governed under the Regulation of Head of Capital Market and Financial Institution Supervisory Board No. KEP-431/BL/2012 on the submission of issuer or public company and its annex ("**Bapepam-LK Reg. 2012**"). POJK No. 29/POJK.04/2016 revokes Bapepam-LK Reg. 2012 as of 1 January 2017. Thereafter all matters concerning the annual report of the issuer or public company shall be in accordance with POJK No. 29/POJK.04/2016.

In essence, under POJK No. 29/POJK.04/2016, the Board of Directors of the issuing or public company shall draw up an annual report, then submit such report to the OJK. The annual report shall be available to the shareholders on the date of the summons of the company's General Meeting of Shareholders ("**GMOS**"), and also contained on the company's website. Further details about the content and formation of the annual report will be stipulated under the OJK circular letter. However, every annual report shall at least cover the following information:

- a. summary of significant financial data;
- b. information pertaining to shares (if any);
- c. Board of Directors' report;
- d. Board of Commissioners' report;
- e. company profile of the issuer or public company;
- f. assessment and deliberation on company's management;
- g. information pertaining to the current governance of the issuer or public company;
- h. information on company's social and environment responsibility;
- i. audited financial account;
- j. statement from the Board of Directors and Board of Commissioners about their assurance to the annual report.



As for the submission, every annual report shall be submitted to OJK at least 4 months after the company's financial year. In case of the issuer or public company obtaining its initial effective statement/*pernyataan efektif* within the submission period, the annual report may be submitted at the latest on the date of the summons of GMOS. It is worth noting that this submission obligation shall not be applied to the issuer of debt-like securities and/or Sukuk, which has already settled its obligation prior to the submission schedule.

Further, POJK No. 29/POJK.04/2016 imposes the following administrative sanctions for any violations of the provisions contained in POJK No. 29/POJK.04/2016:

- a. warning letter;
- b. fine;
- c. restriction on business activity;
- d. freezing of business activity;
- e. revocation on business license;
- f. cancellation of any obtained approvals;
- g. cancellation of registration;
- h. other sanctions as the OJK deems fit.

Administrative sanctions in point (b) to (g) above, may be imposed without a prior warning letter as mentioned in point (a). As for a "fine" sanction, this can be imposed along with other types of sanction in point (c) to (g). Further, any imposition of administrative sanction on the issuer or public company can be announced to public by the OJK.



# Asset Repatriation and Procedures for Placement in Investment Instruments regarding Tax Amnesty

by Rizkita Widya Murwani



As of 18 July 2016, the Minister of Finance has regulated the repatriation of taxpayers' asset into Indonesia along with its allocation in the investment instruments in financial markets under the Regulation No. 119/PMK.08/2016 ("**PMK No. 119/2016**"). This was amended by Regulation No. 123/PMK.08/2016 ("**PMK No. 123/2016**") on 8 August 2016 with regard to tax amnesty. Under the Law No. 11 of 2016 concerning Tax Amnesty ("**Law No. 11/2016**"), the whole purpose of tax amnesty itself is stipulated as a way to pace up and restructure the economy through asset repatriation, by impacting the increase of domestic liquidity, revaluation, rate decrease, and investment increase. Tax amnesty is also believed to be a catalyst in taxation reformation towards a fairer tax system along with the expansion of tax data to become more valid, comprehensive, and integrated, as well as improving tax income which shall be allocated to support the development of the country.

Pursuant to the Law No. 11/2016, taxpayers shall repatriate and invest offshore assets in Indonesia in order to use the lower Redemption Money rate for offshore asset declaration. However, PMK No. 119/2016 expands the scope of offshore assets, which includes funds that have been placed within Indonesia after 31 December 2015 and prior to the issue of Tax Amnesty Approval (*Surat Keterangan Pengampunan Pajak/SKPP*) by the Regional Tax Office Head supervising the Tax Service Office where the taxpayer is registered. In other words, such assets shall

be invested subject to the prescribed investment list for offshore asset repatriation in order to obtain the lower Redemption Money rates through a Special Account (*Rekening Khusus*) in Perception Banks appointed by the Minister of Finance as a gateway. The whole repatriation of assets shall be proven by a competent authority, pursuant to the amendment under PMK No. 123/2016. The taxpayer shall then transfer the funds from the offshore assets into the Special Account, which marks the starting point of the three-year investment requirement calculation. The aforementioned funds may then be placed in a prescribed list of investments as follows:

1. Government securities;
2. State-owned Enterprises' bonds;
3. State-owned Financing Companies' bonds;
4. Financial instruments in Perception Banks appointed by the Minister of Finance;
5. Private company bonds whose trading is supervised by the Financial Services Authority;
6. Infrastructure investments through the government's cooperation with business entities;
7. Investment in the real sector based on the priorities set by the government through the Decree of the Minister of Finance; and/or
8. Other investment forms.

The prescribed investment may be in the form of debt securities (including Medium Term Notes), Sukuk (Islamic Bonds), shares, mutual funds, asset-backed securities, Real Estate Investment Funds, time deposits, savings accounts, current accounts, futures contracts sold on futures exchange in Indonesia, and/or other financial investment instruments including insurance, financing companies, pension funds, or venture capital products, which are approved by the Financial Services Authority.