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Bank Indonesia's New Financial Technology Regulation

by Arien Kartika Sari

Indonesia's ambition to become one of Asia's e-commerce giants has a better chance to grow since the Central Bank of Indonesia ("**Bank Indonesia**") issued Regulation No. 18/40/PBI/2016 on 8 November 2016 regarding Implementation of Payment Transaction Processing ("**PBI 18/2016**"). This regulation introduces new financial technology services, widely-known as FinTech, to fill the void in Indonesia's legal system that governs electronic payment system.

Under PBI 18/2016, payment gateway companies, e-wallet and e-money operators, as well as card-based switching and card-based system operators are classified as payment-system operators. The supporting services include, among others, data center provider and/or disaster recovery center, contactless transaction support technology providers, and card producers. Both operators or supporting services must apply for a business license from Bank Indonesia. They must also obtain a prior consent from Bank Indonesia in the event of new joint ventures or development in their payment system and products and activities. These operators can be in the form of bank or non-bank limited liability companies. For compliance, they will be obliged to submit a routine and incidental report to the Bank Indonesia.

PBI 18/2016 introduces a new foreign-ownership limitation for Principal, Switching Operators, clearing operators and final settlement operators which shall be a maximum of 80%. This limitation is yet to be included in the 2016 Negative Investment List, but we predict that this will be included in the next list.

Through this regulation, Bank Indonesia prohibits operators from processing payment transactions using virtual currency.

This clarifies Bank Indonesia's long-standing view that Indonesia does not recognize virtual currency such as Bitcoin as a valid payment instrument.

Operators who have been performing their activities before PBI 18/2016 must apply for a business license to Bank Indonesia at the latest six months after the enactment.

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Development of Domestic Oil Refineries by Private Companies

by Auraylius Christian

The Minister of Energy and Mineral Resources ("**MEMR**") issued Ministry of Energy and Mineral Resources Regulation No. 35 of 2016 concerning the Implementation of Domestic Oil Refinery Development by Private Companies ("**MEMR Regulation No. 35/2016**") on 10 November 2016, in order to achieve energy security, increase the country's fuel production capacity and reduce dependency upon fuel imports. The government is aiming to optimize the role of private companies through the development of domestic oil refineries. The regulation then entered into force on 11 November 2016.

In compliance with MEMR Regulation No. 35/2016, private oil refineries refer to refining facilities for fuel and/or its condensates, as well as all of their necessary supporting facilities, as they are developed by private companies in Indonesia. Article 3 of MEMR Regulation No. 35/2016 then stipulates that such private companies may undertake such developments only after they have first secured processing business licenses (*izin usaha pengolahan*) in accordance with the prevailing laws and regulations.

As stipulated in Article 4 of MEMR Regulation No. 35/2016, in order to enhance their economic feasibility, the development of any oil refineries by private companies may be supported by:

(a) various fiscal or non-fiscal facilities in accordance with the prevailing laws and regulations; and/or
(b) the integration of petrochemical production.

Article 5 of MEMR Regulation No. 35/2016 also stipulates that the supply of any raw materials necessary for the operation of such oil refineries may be sourced from fuel and its condensates which are either produced within Indonesia or which are imported from other countries, MEMR Regulation No. 35/2016 also states that all fuels which are refined at such facilities must be prioritized for domestic needs, and can only be exported to foreign countries after due consideration has been paid to domestic needs, as well as to the prevailing laws and regulations. Moreover, MEMR Regulation No. 35/2016 also asserts that any fuels which are produced by private oil refineries can be sold directly to domestic end users, provided that any private companies which are intending to do so will be given the General Trading Business License.

Furthermore, Article 8 of MEMR Regulation No. 35/2016 stipulates that any private companies which are currently in the process of developing their own oil refinery facilities to be directly appointed as distributors of certain types of fuel and special types of fuel by the Oil and Gas Downstream Regulatory Agency ("**BPH Migas**"). However, any such appointments should only involve companies which have already secured General Trading Business Licenses and which are also in possession of proper storage and distribution facilities.

MEMR Regulation No. 35/2016 in Article 9 has also asserted that the development of any new oil refineries should:

(a) utilize technologies which maximize environmental protection and management; and
(b) focus upon the use of domestic products.

In line with this stipulation as stipulated in Article 10, MEMR Regulation 35/2016 authorizes the Director General of Oil and Gas ("**Director General**") to oversee and improve the construction, development and operation of oil refineries by private companies in accordance with the prevailing laws and regulations. Similarly, the authority to supervise the procurement and distribution of certain types of fuel and special types of fuel has now been granted to the BPH Migas under Regulation 35/2016. Finally, as stated in Article 11 of MEMR Regulation No. 35/2016, any private companies which engage in the development of oil refineries are obliged to submit routine reports to the Director General every three months or whenever they are requested to.

The Regulation on Broadcasting Licenses Requirements and Procedures

by Eivan Hadhy Prabowo

On October 31st, 2016 the Minister of Communications and Informatics ("**MOCIT**") promulgated the Minister of Communication and Informatics Regulation Number 18 of 2016 regarding the Broadcasting Licenses Requirements and Procedures ("**Permenkominfo 18/2016**"). The Permenkominfo 18/2016 aims to enhance and summarize the Principle Licenses, Broadcasting Licenses (*Izin Penyelenggaraan Penyiaran* or "**IPP**") and IPP Renewal terms and procedures for broadcast institution regulations, which were previously regulated according to several Permenkominfo.

Permenkominfo 18/2016 mentions that a broadcast institution classification is as follows:

a) Public Broadcast Institution (*Lembaga Penyiaran Publik* or "**LPP**");
b) Local Public Broadcast Institution (*Lembaga Penyiaran Publik Lokal* or "**LPP Lokal**");
c) Private Public Broadcast Institution (*Lembaga Penyiaran Swasta* or "**LPS**");
d) Community Broadcast Institution (*Lembaga Penyiaran Komunitas* or "**LPK**");
e) Subscription Broadcast Institution (*Lembaga Penyiaran Berlangganan* or "**LPB**").

Prior to run broadcasting business activity, broadcast institutions must first obtain Principle Licenses and an IPP as mentioned in Article 3 and 5 of the Permenkominfo. The duration of the Principle License is 6 months for a radio service, and 1 year for a television service. The Principle license is not renewable. Whilst, the duration of the IPP is 5 years for radio broadcast services, and 10 years for television broadcast services, contrary to the Principle License, the IPP is renewable.

To obtain the IPP, broadcast institution must file a written application to MOCIT by virtue of the Regional Indonesian Broadcasting Commission (*Komisi Penyiaran Indonesia* or "**KPI**") to be handed to the Central KPI and submit the application letter to MOCIT. As stipulated in Article 23 of Permenkominfo 18/2016, an IPP application specifically for a terrestrial LPS and LPB must be applied for in accordance to the tenure stated on the broadcasting availability notification made by MOCIT.

Regional KPI will examine the broadcast program's completeness, whilst MOCIT will examine the administration and broadcast technical data completeness. Moreover, either Regional KPI and MOCIT shall each notify within 2 working days if the application is not complete or has not fulfill the requirement. The applicant then must complete the application no later than 15 days since the applicant received the notification letter, and the application will be deemed cancelled if the applicant does not fulfill the requirement until the assigned timeframe.

Should the application meet the requirements, the Regional KPI may issue the Broadcasting Feasibility Recommendation letter (*Rekomendasi Kelayakan Penyelenggaraan Penyiaran* or the "**RKPP**") to MOCIT to conduct the Joint Forum Meeting *(Forum Rapat Bersama* or the "**FRB**") to decide on acceptance or rejection of the application.

If the FRB decides to accept the application, the applicant is obliged to make Principle License payment no later than 15 days after the issuance of the payment order (*Surat Perintah Pembayaran* or "**SPP**"). 3 days after the due date, the Director General will issue a warning letter, and if within 10 days since the issuance of the warning letter, the applicant does not fulfill their obligation, the applicant will be deemed to have resigned. MOCIT will then issue the Principle License 7 days after the payment.

Broadcast Institutions may use the Principle License for these purposes, amongst others:

a) Building infrastructure;
b) Arrangement of the Radio Station License (*Izin Stasiun Radio* or "**ISR**") for applicant using the radio frequency spectrum;
c) Arrangement of *Hak Labuh* for the applicant who wishes to use foreign satellites;
d) Broadcast tests purposes; and
e) Application of the Broadcast Tests evaluation (*Evaluasi Uji Coba Siaran* or "**EUCS**").

However, during the Principle License tenure, as stipulated on Article 44 of Permenkominfo 18/2016, broadcast institutions are not allowed to do the following:

a) Make any change to its shareholders structure, unless the change of shareholders occurs in the event of inheritance;
b) Broadcast advertisements other than public service advertisements; and
c) Collecting any fee related to the broadcasting fee.

It is compulsory for broadcast institutions to do the broadcast test, after obtaining the Principle License. Article 48 of Permenkominfo 18/2016 stated that the broadcast institution may air its proposed programs and broadcast technical data for the duration of 5 hours minimum for a radio service, and 2 hours minimum for a television service. Furthermore, the broadcast tests will be evaluated by the EUCS, the Principle License shall be revoked if the EUCS decide to reject the application. On the other hand, MOCIT may issue the IPP if the EUCS decides to accept the application.

As stipulated in Article 62 Permenkominfo 18/2016, broadcast institutions managing to obtain the IPP are obliged to report their broadcast operation annually to MOCIT, no later than June 30th of the following year.

Permenkominfo 18/2016 was enacted on November 5th, 2016 and will take effect 3 months later. By the time Permenkominfo 18/2016 takes effect, Permenkominfo No. 17/P/M.KOMINFO/6/2006; Permenkominfo No. 08/P/M.KOMINFO/3/2007; Permenkominfo No. 28/P/M.KOMINFO/09/2008; and Permenkominfo No. 18/P/M.KOMINFO/03/2009 will be revoked and shall be declared no longer valid.

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New Law on Indonesian Trademarks

by Alfons Emanuel Moller

The Indonesian Parliament has passed a new law on trademark and geographical indications ("**New Trademark Law**"). Essentially, the New Trademark Law aims to cover matters that weren't previously accommodated in the Law No. 15 of 2001 on Trademark Law ("**Old Trademark law**"). Set out below are key changes under the New Trademark Law.

New Protected Subject

The New Trademark Law acknowledges protection to Non-Traditional marks in the form of: (i) 3 dimensional marks; (ii) sound marks; and (iii) hologram marks. These forms are in addition to the previously protected forms i.e., pictures, logos, names, words, letters, numbers, colors and a combination of two or more of the said forms.

Registration Time Frame

By the book, overall registration time is shortened from 14 months to approximately 9 months. This registration process consists of filling date, formal examination, publication (to check whether there is opposition against the trademark registration) and substantive examination. Once the application passed the substantive examination, the Minister of Law and Human Rights will issue a trademark certificate which should be taken by the applicant not later than 18 months since the issuance date.

Unlike the Old Trademark Law, publication is now scheduled before substantive examination. This is designed to make the substantive examination also scrutinise any oppositions (as the case may be), preventing a second substantive examination in the case of any opposition occurring.

Non-registerable Trademarks

There are 2 new elements that fall within the category of non-registerable trademarks, as follows:

1. it contains elements which can mislead the public about origin, quality, type, size, kind intended use of the goods and/or services; or, is a name of plant variety protected for similar kinds of goods/and or services;
2. it contains information which is not in accordance with the quality, benefits or efficacy of the goods and/or services.

Late Renewal of Trademarks

Subject to late fines, it is possible to still renew within 6 months after the expiry date. Previously, trademarks renewal had to be submitted within 12 months prior the expiry date.

Dispute Settlement

Originally, only the owner of the registered trademark was able to file a lawsuit for any unlawful utilization of its registered trademark. Under the new regime, such a lawsuit can also be filed by the owners of famous brands, although their brands are not registered under Indonesian Trademark Law.

Criminal Sanction

Unlawful utilization of registered trademarks will result in imprisonment as follows: (i) up to 5 years for utilization of a, trademark which is 100% percent similar, with an already registered trademark owned by other parties; (ii) up to 4 years if the similarity is only in principle. Such imprisonment may be replaced or even added to with a maximum fine of Rp2.000.000.000,- (two billion Rupiah).

Additionally, the New Trademark Law introduces a heavier criminal sanction of up to 10 years imprisonment and/or a maximum fine of Rp5.000.000.000,- (five billion Rupiah), if such utilization causes damage to health, environment and/or human death.

Transitional Provisions

All registered trademarks under the Old Trademark Law which are still valid upon the effective date of the New Trademark Law, will continue to be in effect throughout the remaining term of its registration. All trademark applications which have been filed but not yet finished upon the effective date of the New Trademark Law, will be processed under the Old Trademark Law. Further ongoing trademark disputes upon the effective date of New Trademark law will be processed under the Old Trademark Law until the issuance of a court decision with legal binding force.

Geographical Indications

Registration of foreign geographical indications is processable, provided that such geographical indications have been acknowledged by the origin country and/or already registered pursuant to the prevailing laws of origin country.

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