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NEWSLETTER Issue 39 JANUARY 2017

Regulation on the Implementation of Coal and Mineral Resources Mining is Amended

by Febi Jaya Conggih

The President of the Republic of Indonesia has issued the fourth amendment of Government Regulation No. 23 Year 2010 ("**GR No. 23/2010**") concerning the Implementation of Coal and Mineral Resources Mining. It is contained in Government Regulation No. 1 Year 2014 ("**GR No. 1/2017**"). GR No. 23/2010 has been amended three times previously; the last amendment with Government Regulation No. 77 Year 2014. GR No. 1/2017 came into effect on 11 January 2017.

GR No.1/2017 amended the provision related to the extension of the Operation-Production Mining Business License (*Izin Usaha Pertambangan Operasi-Produksi* or "**IUP-OP**"). Previously, the extension of IUP-OP could be done in a period of 6 months to 2 years before the IUP-OP expired. Under GR No. 1/2017, IUP-OP specifically for metallic minerals, certain types of nonmetallic minerals, or coal, this can be extented at the earliest 5 years and at the latest 1 year before the IUP-OPs expires. It means that for the IUP-OP which is not for metallic minerals, certain types of nonmetallic minerals, or coal, the extension period remains the same.

GR No. 1/2017 also removes the provision of Article 112C paragraph 3, which allows the holder of a mining work contract that undertakes mining activities for metallic minerals and conducts purification, to sell the minerals abroad in a certain amount. Thus, since this regulation applies, the holder of the work contract can no longer sell the minerals produced outside the territory of the Republic of Indonesia. This is to encourage mining companies who still have work contracts to upgrade them into Special Mining Business Licenses (*Izin Usaha Pertambangan Khusus* or "**IUPK**").

The government also amends the provisions regarding the divestment, in terms of if the holder of the IUP or IUPK is a foreign owned company. If the holder of an IUP and IUPK is a foreign owned company, it must divest its shares in such a company and cede to a local investor after 5 years of conducting production activities. After 10 years, the participation of the Indonesian investor must reach 51%. This provision applies to any kind of IUP or IUPK.

Moreover, GR No. 1/2017 aadds one more provision in Article 112, to the effect that the parties who build a purification facility in Indonesia must use metallic minerals with certain criteria. This is stated in Article 112F.

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Presidential Regulation on Funding of Land Procurement for the Undertaking of Construction in the Public Interest

by Eivan Hadhy Prabowo

In order to accelerate the national strategic project, on December 2nd, 2016 the President of the Republic of Indonesia enacted Presidential Regulation No. 102 of 2016 on Funding of Land Procurement for the Undertaking of Construction in the Public Interest in order to Establish a National Strategic Project ("**Perpres 102/2016**"). Perpres 102/2016 specifically regulates such funding of land procurement for the undertaking of construction in the public interest related to the national strategic project. The funding of land procurement that is not a national strategic project is regulated separately.

Perpres 102/2016 stipulated that the funding of land procurement for the undertaking of construction in the public interest in order to exercise the national strategic project performed by a Ministry or Institution and/or State-Owned Enterprise, must be conducted through investment financing by the government, by the following methods

a. direct compensation by the Minister of Finance; and/or
b. use the funds of a business entity.

The payment of the funding made by the Minister of Finance, and functionally conducted by the division in the Ministry of Finance which manages state assets by implementing public enterprise financial management.

The minister (dealing with state financial management) is formally responsible for the funding plan and distribution of the compensation to those who have the right to compensation, or business entity if the fund was initially paid by the business entity, by proposal from the Minister/Head or the Board of Directors of the State-Owned Enterprise.

In the other hand, the Minister/Head or Board of Directors of the State-Owned Enterprise is responsible on the demand planning and submission of the compensation. The Minister of Agrarian and Spatial Planning is responsible for the land procurement in accordance with the rule of law on land procurement in the public interest.

The implementation of the funding will be conducted through planning and budgeting, and supervision, compensation and certification steps. The funding for land procurement may draw on advance funds from a business entity which has the power based on an agreement to act for and on behalf of the Ministry or Institution in accordance with the rule of law. Such a business entity may be a State-Owned Enterprise or a Limited Liability Company.

The use of advance funds from a business entity is applicable when the Ministry or Institution does not have the budget for the construction, but the national strategic project must be implemented in the relevant year or there is lack of budget on land procurement related to the national strategic project.

Finally, the chief executive of the land procurement cedes the result of land procurement to the Ministry or Institution or Board of Directors of the State-Owned Enterprise along with the land procurement data no longer than 7 working days after the referral from the chief executive for land procurement. Based on such a referral, the Minister files a certification application for and on behalf the Government of the Republic of Indonesia casu quo Ministry of Finance. The government may guarantee the risks of any delay on land procurement budgeting implemented by the Ministry or Institution by appointing an infrastructure projects underwriting business entity.

The budget on land procurement for a national strategic project allocated by the Ministry/Head or Board of Directors of State-Owned Enterprise between 2016 and 2017 may still be used for land procurement in accordance with the rule of law.

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IT-Based Peer to Peer Lending Services are Now Regulated

by Ricky Hasiholan

As a result of the rapid development of financial technology companies which provide peer to peer lending services ("**Operator**"), on December 29, 2016 the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") issued the OJK Regulation Number 77/POJK.01/2016 on Information Technology Based Lending Services ("**POJK 77/2016**"). It is feared that the rapid growth of the Operator could have the potential to harm service users. Therefore, it put pressure on the OJK to issue POJK 77/2016 in order to supervise the Operator whilst helping it to grow and contribute to the national economy.

The Operator is an Indonesian legal entity that provides, manages and operates IT-Based Peer to Peer Lending Services ("**Services**") to the Borrower, which fund originate from the Lender. Lenders and Borrowers are called Services Users ("**Users**"). Based on the POJK 77/2016, the Operator is classified as other financial institutions.

The Operator must be in the form of limited liability company ("**PT**") or cooperative (*Koperasi*). A PT-formed Operator can be established and owned by citizens and/or Indonesian legal entities; and/or foreigners and/or foreign legal entities. The maximum shareholding by foreigners and/or foreign legal entities is 85%. Hence, foreigners or foreign legal entities need to find local partner(s) to establish a PT-formed Operator.

The Operator is required to submit a registration application to the OJK. For the Operator who has been conducting its activities before POJK 77/2016 was enacted, an application for registration to the OJK must be made no later than 6 months after POJK 77/2016 came into force. The OJK establishes registration approval by issuing a proof of registration letter.

The Operator which has been registered is required to submit periodic reports every four months to the OJK with at least the following information: a) the quantities of the Lenders and Borrowers; b) the quality of the loan received by the Borrower following basic loan quality assessment; and c) the activities that have been performed after registering with the OJK.

In addition, the Operator who has registered is also obliged to apply for a license from OJK as Operator no later than one year from its listing with the OJK. If the period of 1 year has expired and the registered Operator has not submitted the permit application or does not meet the licensing requirements, its proof of registration letter will be declared cancelled. The Operator who has obtained a license must submit monthly and annual reports electronically to OJK. These procedures as well as license application matters are regulated in detail in POJK 77/2016.

One of the substantial issues in POJK 77/2016 is capital. The Operators must have a minimum amount of capital to run its business. At the registration phase, the paid up capital of a PT-formed Operator and owner's capital of a Cooperative-formed Operator must be at least Rp1.000.000.000,-. At the time of applying for license, the paid up capital of a PT-formed Operator and equity capital of a cooperative must be at least Rp2.500.000.000,-.

POJK 77/2016 stipulates that the maximum limit of total lending to each Borrower is Rp2.000.000.000,- but POJK 77/2016 does not stipulate the limit of the interest rate.

In the matter of change of ownership, the Operator must obtain the approval of the OJK first. The Licensed Operator who is not able to continue its operations must apply to the OJK for revocation , along with the reasons and the plan of settlement of rights and obligations of the Users.

Furthermore, POJK 77/2016 stipulates that the Borrower must have originated from and be domiciled in the jurisdiction of the Republic of Indonesia. The Borrower may be an individual citizen or Indonesian legal entity. Meanwhile, the Lender may be: a) an individual citizen; b) an individual foreigner; c) an Indonesian/foreign legal entity; d) an Indonesia/foreign business entity; and/or e) an international organization.

The agreements for performing Services ("**Agreements**") must cover the agreement between the Operator and the Lender; and the agreement between the Operator and the Borrower. The contents of the Agreements required by the OJK are set out in Article 19 and Article 20 of POJK 77/2016. Agreements are executed with electronic signatures.

Another obligation of the Operator is the requirement to use an escrow account and a virtual account in performing the Services. The Operator must provide a virtual account for each Lender. The Borrower must make repayments through the escrow account which will be forwarded by the Operator to the virtual account of the Lender.

The Operator can be a member of the OJK's financial information service systems or other information systems services listed with the OJK. The Operator must also be able to cooperate and exchange data with IT-based supporting service providers in order to improve quality of service.

Moreover, the Operator is obliged to use the data center and disaster recovery center located in Indonesia. POJK 77/2016 also makes stipulations on the matters of the confidentiality of data which includes authentication, verification and validation; acquisition, use and disclosure of personal data; media communication and notification to data owners in the event of data protection failure. The Operator must also provide an audit trail record of all activities in the Electronics Systems of IT-Based Lending Services.

The Operator is required to apply the basic principles of User protection, which are a) transparency; b) fair treatment; c) reliability; d) confidentiality and data security; and e) Users dispute resolution in a simple, fast, and affordable cost.

The Operator must include its name and/or logo and the Operator statement about its registration and supervision by the OJK in any offers or promotions. The Operator is also required to apply the programs on anti-money laundering and the prevention of terrorism funding in the financial services sector to the Users in accordance with the legislation.

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Application Procedure for a Business Permit for a Mutual Fund in the Form of a Company

by Athalia Devina

The Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or the "**OJK**") has enacted OJK Regulation No. 39/POJK.04/2016 concerning the Application Procedure for a Business Permit for a Mutual Fund in the Form of a Company ("**POJK No. 39/POJK.04/2016**"). POJK No. 39/POJK.04/2016 came into force on 7th December 2016. POJK No. 39/POJK.04/2016 supersedes the Decision of the Capital Market Supervisory Board (BAPEPAM-LK) No. Kep-17/PM/1996 concerning the Application Procedure for a Business Permit for a Mutual Fund in the Form of a Company.

The application for a business permit as a mutual fund in the form of a company will be conducted via the following procedure:

1. completion of the application form in accordance with the format as attached in the appendix of POJK No. 39/POJK.04/2016;
2. submission of the following documents: a) articles of association of a mutual fund in the form of a company that has already obtained approval by the Minister of Law and Human Rights; b) contract management of a mutual fund in the form of a company; c) a contract between a mutual fund in the form of a company and a custodial bank; d) appointment of the legal consultant(s); and e) appointment of the accountant(s);
3. submssion of the documents regarding the directors of a mutual fund in the form of a company;
4. submission of the documents regarding the investment managers;
5. submission of the documents regarding the custodial banks; and
6. submission of the opening balance.

The above application must be submitted to the OJK in quadruplicate.

If the application does not meet the requirements, the OJK will send a notification letter to the applicant which states that the application is incomplete or rejected. If the application meets the requirements, the OJK will issue the business permit. A mutual fund in the form of a company that has already obtained a business permit must submit the registration statement for a public offering within a period of 6 (six) months from the stipulated date.

Without prejudice to penal provisions in capital markets, the OJK may impose administrative sanctions on any person who violates the provisions of POJK No. 39/POJK.04/2016 including the party that caused such violations. The following administrative sanctions may be imposed by the OJK:

1. written warnings;
2. fines;
3. restriction of business activities;
4. limitation of business activities;
5. suspension of business activities;
6. cancellation of approvals; and
7. cancellation of applications.

The administrative sanctions referred to in number 2, 3, 4, 5. 6. and 7 can be imposed with or without written warnings. The administrative sanctions referred to in number 2 can be imposed on its own or jointly with other administrative sanctions referred to in number 3, 4, 5, 6, and 7. In addition to administrative sanctions, the OJK may take further action against any person who violates the provisions of POJK No. 39/POJK.04/2016. The OJK may announce the imposition of administrative sanctions and other action taken to the public.

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