



# The New Regulation on Exploitation of Natural Gas in the Downstream Oil and Gas Industry

by Yustinus PE Prasetyo



The Indonesian government, through the Ministry of Energy and Mineral Resources (“MEMR”), has issued a new regulation on Exploitation of Natural Gas in the Downstream Oil and Gas Industry (“MEMR Regulation No 4/2018”). The regime aims to promote the infrastructural development of natural gas distribution through pipes, improve the utilization of natural gas for domestic needs and accommodate the development of natural gas distribution modes in addition to pipes. The scope of this regulation covers business activities in the distribution, commerce, and storage of natural gas.

Article 4 states that Directorate General of Oil and Gas (“Migas”) has responsibility in preparing the Master Plan for Transmission and Distribution Network of Natural Gas (“Master Plan”). The Master Plan contains information regarding the period of construction, operation and used infrastructure capacity, which will be the basic considerations in the development of a natural gas infrastructure, investment decisions, and development of a natural gas domestic market. The MEMR will approve the Master Plan and it can be adjusted annually or at any time if required. Based on the Master Plan, which has been approved, the Downstream Oil and Gas Regulatory Agency (“BPH Migas”) will conduct an evaluation and grant a special right on the Transmission Segment and/or Territorial Network Distribution (“Special Right”). The granting of special

rights process will be exercised through an auction mechanism. Alternatively, the MEMR with the consideration of BPH Migas, can appoint a State-Owned Enterprise to exercise the rights instead.

Article 10 of the regime stipulates that the distribution of natural gas through pipes shall be performed by a legal entity, only if such entity has obtained the Oil and Natural Gas Distribution Business License (“License”) and Special Right. The regulation also requires that the legal entity in question must own transmission pipes and supporting facilities in the transmission segment. In return, the legal entity who possesses the License and Special Right has the privilege of conducting the distribution business of natural gas in a specific transmission segment without any competitor, as reflected in Article 10 paragraph (3) of the MEMR Regulation No.4/2018. Nonetheless, legal entities may have licenses on more than one transmission segment.

The same treatment will be applied to the distribution of natural gas in addition to pipes. Article 20 of the regime states that legal entities may conduct the distribution only after such entities have received the business license from the MEMR. The recipient of the License may conduct business activities, including distribution and storage of compressed natural gas and liquefied natural gas.



# Ministry of Public Works and Housing Creates Safety in Construction Committee

by Pratiwi Widyastuti



A new decree from the Ministry of Public Works and Housing (**MoPWH**) was issued on 24 January 2018, resulting a new organization called the Safety in Construction Committee. This subject is regulated under Decree of the MoPWH No. 66/KPTS/M/2018. The regulation is divided into two parts that consist of the provisions itself and attachments showing the membership structure.

The high number of construction work accidents, such as Indonesia Stock Exchange's bridge case and the falling girder of Jakarta's LRT project that happened recently, is one of the reasons why such a decree was released. It serves also to implement provision on Article 19a paragraph (2) Regulation of MoPWH No. 02/PRT/M/2018, an Amendment on Regulation of MoPWH No. 05/PRT/M/2014 on a Guidance System of Safety Management and Occupational Health.

The committee is obliged to monitor and evaluate the execution of high risk construction, carry out construction accident investigations, and provide advices and considerations to the Minister based on the result of monitoring and evaluation and/or construction accident investigation in order to establish better safety in construction practices.

The committee are authorized to enter the construction work place, enquire into related parties, request data related to the committee's duties, and cooperate with related parties regarding Safety in Construction.

In performing their duties, this task is independent and will only be responsible for the objectivity and truth of the investigation result. They are also assisted by the Secretariats of the Committee and officials and/or experts in the field related to the duties and function.

There are three sub-committees in this structure, those are Sub-Committee of Road and Bridge, Sub-Committee of Water Resources and Sub-Committee of Building Construction.

More over, based on the decree's attachment, there are four secretariats, namely:

- a. Head of Sub-Directorate of Sustainable Construction, Directorate Enforcement of Construction Service, Directorate General of Construction;
- b. Head of Sub-Directorate of Quality Management, Directorate Enforcement of Construction Service, Directorate General of Construction;
- c. Head of Standard and Guidance Section, Sub-Directorate of Sustainable Construction, Directorate of Construction Service, Directorate General of Construction;
- d. Head of Monitoring and Evaluation Section, Sub-Directorate of Sustainable Construction, Directorate Enforcement of Construction Service, Directorate General of Construction;
- e. Head of Standard and Guidance Section, Sub-Directorate of Management Quality, Directorate of Construction Service, Directorate General of Construction;
- f. Head of of Monitoring and Evaluation Section, Sub-Directorate of Quality Management, Directorate Enforcement of Construction Service, Directorate General of Construction

# Financial Services Authority Regulates the Asset-Backed Securities Contract

by Mega Septiandara

The Financial Services Authority (“**FSA**”) recently issued Regulation No. 65/POJK.04/2017 regarding the Issuance and Reporting Guide for Asset-Backed Securities in Collective Investment Contract Form (“**FSAR 65/2017**”). A Collective Investment of Asset-Backed Securities Contract (“**CIABSC**”), as defined in Article 1 of FSAR 65/2017, is a contract between investment managers and custodian banks which bind the holders of asset-backed securities where investment managers may manage collective investment portfolios and custodian banks are authorised to perform collective safekeeping. Financial assets that can be managed:

- a. must have and produce cash flow;
- b. can legally be owned and within the possession of the Originator;
- c. is transferable to a CIABSC.

Examples of those financial assets are billings from commercial papers and credit cards, future receivables, government-secured debt, etc.



FSAR 65/2017 also sets out the mechanism for the CIABSC itself. The CIABSC should be made as an official deed before an FSA-registered Notary. The deed must include things related to the management of Asset-Backed Securities, among others: name, obligation, authority, fee of investment manager and custodian bank, the rights of Asset-Backed Securities holder, and termination of CIABSC. The CIABSC shall be named based on the investment manager who manage the Asset-Backed Securities. Asset-Backed Securities which is managed through CIABSC will be evidenced through a collective ownership certificate.

Asset-Backed Securities may be offered through listing or non-listing. An offer through listing is subject to other capital market and financial services authority regulations, which includes an obligation to register the Asset-Backed Securities to the FSA prior to listing date. This FSAR 65/2017 provides guidance on the formation of prospectus for the listing.

Aside from the formation of the contract, FSAR 65/2017 also gives guidance on reporting the CIABSC. The reporting comprises: a) report to the Asset-Backed Securities holder and b) report to the FSA. The report to Asset-Backed Securities holder shall be carried out on monthly basis, consisting of among others, the financial report of CIABSC, due date weighted average, accrued balance, and estimate of payment date of Asset-Backed Securities, and other material information. Besides a monthly report, the investment manager also has the obligation to report annually, due on March 31st, but the annual financial report must be audited by an FSA-registered Accountant.

The report to the FSA must be carried out on monthly basis, and annually for the financial report. All directors and commissioners of the investment manager is responsible for the accuracy of the reports. The monthly report shall include, among others, general information related to CIABSC and the billings. The monthly report must be reported to the FSA before 12th of the following month, while the annual financial report must be reported to the FSA at the latest on March 31st of the following year. The reports shall be submitted through the electronic reporting system of the FSA, of which in turn the investment manager will get an electronic receipt. The e-receipt as well as the soft copy of the reports must be saved by the investment managers. If the electronic reporting system is down, the report must be submitted through email.



# New Regulation on Public Offerings by Shareholders

by Alexander Josua Hutagalung

Generally, an Initial Public Offering (“**IPO**”) is when a company offers its shares of capital stock to the general public for the very first time. An IPO provides the shareholders and management of a company with a significant sense of accomplishment, and represents one of the most important milestones in its corporate evolution, including its owners, management, employees and other stakeholders. Prior to “going public”, the owners and management of a potential IPO candidate must implement a corporate governance structure, and other internal procedures and guidelines that are suitable for its life as a public company. Being a public company also means that you will be supervised by lots of government agencies, one of them being the Financial Services Authority (“**OJK**”).

Lately, OJK issued regulations related to public offerings conducted by shareholders, i.e., regulation No. 76/POJK. 04/2017 on Public Offerings by Shareholders (“**Regulation No.76/2017**”). Regulation No.76/2017 was issued to replace the Head of Capital Market Supervisory Agency Decree No. Kep-05/PM/2004 on Public Offerings by Shareholders, along with Regulation No. IX.A.12, which is its appendix.

Regulation No.76/2017 sets out detailed provisions on procedures for public offerings which are undertaken by shareholders of a public company, including the submission of registration statements, prospectuses and public offering result reports. There is a process which must be adopted in applying for submission of registration statements to the OJK as stated in Article 2, which should consist of the following documents: (i) Letter of registration statement (using the format provided under the Appendix to Regulation No.76/2017); (ii) Prospectus which discloses the various types of information stated in Article 2 point (b) of the Regulation No.76/2017, among others as follows: a) information on the cover page; b) concise information regarding the offered shares; c) concise information on the shareholder who is going to sell their shares;d) background to the sale of the shares by the shareholder in the



issuer or public company; and (iii) Statement issued by the shareholder in the issuer or public company stating that the shareholder will be held responsible for bearing all of the costs involved in the public offering process.

Except for the detailed procedure as aforementioned, Regulation No. 76/2017 also has penalties for those who violate it. Any party who violates the provisions of Regulation No.76/2017, may result in the following administrative sanctions being applied, i.e.: (i) written warnings; (ii) fines, namely an obligation to pay a certain amount of money; (iii) a limitation of business activities; (iv) suspension of business activities; (v) revocation of business licenses; (vi) annulment of approvals; and/or (vii) annulment of registrations. Administrative sanctions as above-mentioned in points (ii) to (vii) inclusive may be imposed with or without a preceding imposition of an administrative sanction in the form of written warning as mentioned in point (i).