



Foreign Ownership of Insurance Companies under PP No.14/2018

by Budi Wibowo

On 17 April 2018, the Government of Indonesia issued Government Regulation No. 14 Year 2018 concerning Foreign Ownership of Insurance Companies (**PP No. 14/2018**). The issuance of this Regulation was based on the provision of Article 7 Law No. 40 Year 2014 concerning Insurance. PP No. 14/2018 consists of 11 (eleven) Articles which are divided in to 7 (seven) chapters, namely general provisions, foreign ownership scope, foreign legal entity criteria, foreign ownership boundaries, supervision and reporting, administrative sanctions, and closing provisions. But before further discussion on the aforementioned chapters is conducted, it is important to acknowledge that there are several regulations on foreign investment in Indonesia aside from PP No. 14/2018, such as the Negative Investment List and other BKPM regulations. Thus, any activities based on the following regulations must be in accordance with the prevailing provisions.

PP No. 14/2018 defines Insurance Companies as an insurance company, Islamic insurance company, reinsurance company, sharia reinsurance company, insurance broker, reinsurance brokerage firm and insurance loss appraisal company. According to PP No. 14/2018, a non-Indonesian citizen may participate in an Insurance Company through a transaction mechanism at the stock exchange, while a non-Indonesian legal entity may participate in an Insurance Company through direct investment in an Insurance Company, a transaction mechanism at the stock exchange and/or inclusion in an Indonesian legal entity which directly or indirectly owns an Insurance Company.

According to PP 14/2018, if a non-Indonesian legal entity wants to own or participate in an Insurance Company, they must be classified as an Insurance Company which conducts similar business activities or they must be a parent company where one of their operating companies is conducting similar Insurance Company business activities. Further, ownership by a non-Indonesian citizen or legal entity is capped at 80% of the issued shares in the Insurance Company, with an exclusion for those who already owned more than 80% of the issued shares prior to the issuance of PP 14/2018. They are allowed to keep their percentage of more than 80%, but with a limitation that



they are banned from increasing the percentage of foreign ownership. However, it is important to understand if that this limitation is not applicable to a public company.

Further, if an Insurance Company does not comply with these regulations, they shall be subjected to administrative sanctions in the form of a written warning, a limitation of business activities wholly or partly, revocation on their business licence and/or administrative fines. Further, the procedure for the imposition of the administrative sanctions will be regulated under the Regulation of Financial Services Authorities (**OJK**) as according to PP No. 14/2018, Insurance Companies will be under surveillance by the OJK.



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Regulations of the Board of Governors of Bank of Indonesia concerning the Membership of Monetary Operations

by Gilbert Hansel



On April 30, 2018, Bank of Indonesia ("BI") issued a regulation concerning the participation of banks and intermediaries in Monetary Operations, through the Regulation of the Board of Governors of Bank of Indonesia Number 20/7/PADG/2018 ("PADG No. 20/7/PADG/2018"), namely, the Participation Of Monetary Operations. This Regulation is an addition to the issuance of Bank of Indonesia Regulation Number 20/5/PBI/2018 ("PBI No. 20/5/PBI/2018") about Monetary Operations, the latter becoming one of the BI instruments for monetary control in Indonesia, applied either conventionally or following sharia principles.

In implementing Monetary Operations, BI has two types of policies: Open Market Operations ("OPT") and Standing Facilities. Open Market Operation is a transaction activity in money markets and the foreign exchange market, conducted by BI with Bank or other parties. Standing Facilities is the activity of providing funds by BI to Banks and placement of funds by Banks at BI. Both of these policies can be performed conventionally or following sharia principles.

In this regulation, two parties can participate in Monetary Operations; that is, banks and intermediary institutions. "Bank" in this context means conventional bank, sharia bank and sharia business unit. The intermediary institution referred to is the money market brokers for rupiah and foreign exchange and securities companies. These parties must obtain prior permission from BI before they can participate in Monetary Operations. In obtaining permission from BI, the bank will perform any strategic and fundamental action, such as the following:

- 1) corporate action in the form of mergers, consolidations, acquisitions, and segregation;
- 2) status change;
- 3) name change;
- 4) revocation of business license; and / or
- 5) other strategic steps.

These affect the operational relationships of Banks with BI in monetary affairs, or new Banks which have obtained a business license from OJK, who must also obtain permission from BI. In granting licenses to Banks and Intermediaries, BI considers the following matters:

If acting as an intermediary institution:

- 1) institutional aspects which include:
 - a) a business license issued by BI for Money Market Brokers;
 - b) appointment letter as the main dealer of the Ministry of Finance of the Republic of Indonesia for Securities Companies;
- 2) infrastructural aspects, including:
 - a) for OPT in rupiah, being a participant of the BI-ETP System; and
 - b) for OPT in foreign currency, having the means of Foreign Exchange Monetary Transactions;

- 3) human resource competency in the form of:
 - a) directors and employees responsible for or to perform treasury activities shall have sufficient competence which is evidenced by treasury certificates in accordance with the classification and level of treasury certification;
 - b) directors and employees responsible for or to perform treasury activities, understand and implement market ethical codes which are proven by internal procedures that must be adopted by money market brokers or securities companies;
- 4) aspects of risk management in the form of internal business continuity plan (BCP) procedures related to OPT transactions with BI or related to treasury trading activities.

As for the Bank, it must meet the following aspects:

- 1) institutional, which includes:
 - a) having a business license as a Bank from the authority;
 - b) having a license, approval or recommendation from OJK for a Bank performing strategic and fundamental actions;
- 2) infrastructural, which includes:
 - a) for Monetary Operations in rupiah:
 - i) owning a checking account at Bank of Indonesia;
 - ii) being a participant of the BI-ETP System;
 - iii) being a participant of BI-SSSS; and
 - iv) being a participant of the BI-RTGS System;
 - b) for Monetary Operations in foreign currency:
 - i) fulfilling all requirements as a Monetary Operation participants in rupiah;
 - ii) having a foreign currency checking account at Bank of Indonesia; and
 - iii) having a means of Foreign Exchange Monetary Operation transaction;
- 3) human resource competency in the form of:
 - a) directors and employees responsible for or to perform treasury activities shall have sufficient competence which is evidenced by treasury certificates in accordance with the classification and level of treasury certification;
 - b) directors and employees responsible for or to perform treasury activities, understand and implement market ethical codes which is proven by internal procedures that must be adopted by the Bank;
- 4) risk management:
 - a) having internal Business Continuity Plan (BCP) procedures related to Monetary Operation transactions with BI or related to treasury activities of the Bank; and
 - b) have internal procedures regarding the separation of functions between the front office and back office in relation to treasury activities of the Bank

Before submitting the permit, the parties must already comply with the above provisions. In applying for the permit, the applicant must submit the application in accordance with the format in the attachment of PADG. 20/7 / PADG / 2018, together with supporting documents as evidence that the above requirements have been fulfilled. After obtaining the application, BI will perform:

- 1) administrative research;
- 2) a feasibility analysis of Banks, Money Market Brokers, and Securities Companies that will follow Monetary Operations; and / or
- 3) conduct inspection by an on-site visit to the business location.

Based on these considerations, BI will approve or refuse the applicant as a Monetary Operation participant. Banks which have followed Monetary Operation prior to PBI No. 20/5/PBI/2018 shall be required to apply to BI no later than 6 months from the PBI promulgation.

Regulation of Mineral and Coal Mining Businesses

by Margareth Nita Gunawan

In order to ensure legal and business certainty, as well as to improve effectiveness, efficiency and accountability in the implementation of mining business activities and to encourage the development of mineral and coal exploitation, it is necessary to regulate the exploitation of mineral and coal mining. The Minister of Energy and Mineral Resources recently issued a set of guidelines for mineral and coal mining business activities through the issuance of Regulation No. 25 of 2018 on Mineral and Coal-Mining Businesses ("**Regulation No. 25/2018**"). Regulation No. 25/2018 has been in force since 3 May 2018, formulated as a single framework which covers the entire mineral and coal-mining sector.

Implementation of IUP Exploration or IUPK Exploration should be based on exploration plans, in order to obtain details and comprehensive information relating to mining areas (i.e., location, quality, etc.). Based on the exploration results, holders of IUP/IUPK Exploration are required to undertake feasibility studies based on technical, economic and environmental considerations.

After the relevant exploration activities have been completed, holders of IUP/IUPK OP are then entitled to implement operational production activities such as construction, mining activities, processing and/or refinement (smelting), transportation and sales.

Holders of IUP/IUPK OP involving foreign investment specifically are required to divest 51% of their shares to Indonesian parties after the mining business in question has been operating for a period of five years. Indonesian parties referred to Regulation No. 25/2018 are central/regional government, state/regionally owned enterprises and private domestic enterprises. Violation of Regulation No. 25/2018 will be subject to administrative sanctions, as detailed below:

1. Written warnings;
2. Temporary suspensions of partial or entire business activities; and/or
3. License revocations.

The Director General is authorized to supervise and oversee the implementation of mineral sales overseas and the development and progress of domestic smelting facilities. Supervision of the development and progress of domestic smelting facilities is to be implemented periodically every 6 months or at any time that it is deemed necessary.



The development progress of domestic smelting facilities must have reached at least a 90% level of the original plans by one month prior to the given deadline; otherwise, the export approvals may be revoked and administrative sanctions amounting to 20% of total export sales may be imposed.

Regulation 25/2018 repeals and replaces the following previous regulations:

1. Regulation of the Minister No. 25 of 2008 on Procedures for the Determination of Limitations on National Mineral-Mining Production;
2. Regulation of the Minister No. 34 of 2009 on the Prioritization of Minerals and Coal Supplies for Domestic Needs;
3. Regulation of the Minister No. 17 of 2010 on Procedures for the Determination of Benchmark Pricing for the Sale of Minerals and Coal;
4. Regulation of the Minister No. 33 of 2015 on Procedures for the Installation of Border Signs for Coal-and-Mining-Business License Areas and Special Coal-and-Mining-Business License Areas;
5. Regulation of the Minister No. 41 of 2016 on the Development and Empowerment of Communities through the activities of the Mineral and Coal Mining Sector;
6. Regulation of the Minister No. 5 of 2017 on the Enhancement of the Added Value of Minerals through Domestic Mineral Processing and Refinement Activities, as amended by Regulation of the Minister No. 28 of 2017; and
7. Regulation of the Minister No. 6 of 2017 on Procedures and Requirements for the Granting of Recommendations for the Sale of Processed and Purified Minerals Overseas, as amended by Regulation of the Minister No. 35 of 2017.

The New Regulation concerning Procedures for Area Extension, Licensing, and Reporting on Mineral and Coal Mining Business Activity

by Dennis Abel Panjaitan



On 18 April 2018, the Ministry of Energy and Mineral Resources (“MEMR”) published a new regulation on Procedures for Area Extension, Licensing, and Reporting on Mineral and Coal Mining Business Activity. Regulation of MEMR No. 22 of 2018 is effectively an Amendment of Regulation of Minister of Energy and Mineral Resources No. 11 of 2018 concerning Procedures for Area Extension, Licensing, and Reporting on Mineral and Coal Mining Business Activity.

The new regulation includes the amendment of several regulations related to procedures for area extension, licensing, and mineral and coal business activity reporting. This also includes new regulations on pricing compensation, which remuneration is based on availability of data and information. While in the previous regulation remuneration was based on availability of information, with this new regulation, we may conclude that the price compensation of the Area for Mining Business License (*Wilayah Izin Usaha Pertambangan* or “WIUP”) and the Area for Special Mining Business License (*Wilayah Izin Usaha Pertambangan Khusus* or “WIUPK”)'s data is based on more general qualifications, in accordance with the WIUP and WIUPK being requested.

In Article 25 from the previous regulation, the point of prequalification evaluation result is rated on 70%, while under the new regulation, the same point is rated on 40%. On the previous regulation, the price offering point is rated on 30%, while under the new regulation, the same point is rated on 60%. From the points above, it may be concluded that the point of

prequalification evaluation result tends to decrease, while the price offering point tends to increase.

There is a new article in this new regulation: Article 30A. This article requires that in order to execute the WIUPK's auction as mentioned in Article 30, the Minister must form an Auction Committee for Metal Mineral's WIUPK and Coal's WIUPK. The terms and conditions for the auction's procedure, price offering evaluation, and others in Articles 24 and 25 are also applied *mutatis mutandis* to the Auction process in this Article.

The new regulation determines the reduction of types of WIUP that can be given to the public through the auction procedure. It stipulates that Metal Mineral's WIUP and Coal's WIUP are the only two types of WIUP that can be made available to the public. While Metal Mineral's WIUPK and Coal's WIUPK were regulated under the previous regulation, they are no longer available under the new regulation.

Another specific regulation change also happens in Article 66. Under the previous regulation, the holder of Production-Operation Mining Business License (IUP-OP) was able to buy, to sell, and to load mining commodities that to be processed and/or purified. While in the new regulation, the terms ‘to buy, to sell, and to load’ are changed into ‘to process and/or to purify’ the mining commodities which are provided by a specific mining authorization holder.