



Policy Relaxations through the 16th Economic Policy Package

by A.A.A. Reditha Saras

On 16 November 2018, Indonesian Government launched the 16th economic policy package. This economic policy package is based on the uncertainty in global economy and the effect of world market capital flow. However, the capital inflow to Indonesia has been showing good result, which is showing that foreign investors have high trust to economic condition in Indonesia. The government is optimistic to encourage bigger foreign capital inflow to enter Indonesia through direct investment. Therefore, this economic policy package is about policy relaxations to ensure national economic resilience. The 16th economic policy package is consisting of three main points.

First point is the expansion of Tax Holiday facility. The government will expand the business field that entitled for the facility. That expansion will be based on specific criteria, such as industry that has extensive linkages, give added value and externality, introduce new technology and has strategic value for national economy. The issuance of tax holiday will be harmonized with Online Single Submission (OSS) system. The government will amend the current regulation, which is Regulation of the Minister of Finance No. 35/PMK.010/2018 regarding Tax Holiday.

Second point is regarding the relaxation of Indonesia Negative Investment List (*Daftar Negatif Investasi/DNI*). The government will expand the list of business field that available for foreign investment. The business field list expansion will include businesses that bring technology, innovation, efficiency and export expansion for the nation, also strengthen partnership between big businesses with micro, small and medium-scale



businesses (*Usaha Mikro, Kecil dan Menengah/UMKM*) and cooperatives in Indonesia. A new regulation will be made to replace the current regulation, which is Regulation of the President No. 44 of 2016 regarding Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment. The new regulation is aiming to accelerate the increase and expansion of direct investment significantly.

Lastly, regarding the enhancement of Foreign Exchange Export Proceeds (*Devisa Hasil Export/DHE*) of natural resources, which are from mining, plantation, forestry and fishery. This purpose of this policy is to improve and maintain the economic resilience of the nation. Also, to improve positive perception on national economy. The government will include foreign exchange export process of natural resources in Indonesia Financial System (*Sistem Keuangan Indonesia*) because the export value is bigger than import value. The government regulate and control the foreign exchange by way of giving tax incentives, such as final tariff for income tax on deposits, savings and the Bank Indonesia Certificate (*Sertifikat Bank Indonesia/SBI*) Discount.

New Regulations on Agrarian Reform

by Alexander Josua Hutagalung



The Indonesian government has committed to achieving equity in land use and ownership. The government is introducing a programme of agrarian reform to achieve that aim. To implement reform, the government has enacted Regulation of the President No. 86 of 2018 on Agrarian Reform, dated 27 September 2018 (**Regulation No. 86**).

Regulation No. 86 has a number of aims including:

- the equitable redistribution of certain land;
- ensuring that relevant limited liability companies can be the subject of agrarian reform; and
- the fast and fair settlement of disputes by the Agrarian Reform Taskforce.

Agrarian reform in Indonesia will be carried out in two stages:

- planning; and
- implementation.

During the planning stage, the government will draw up plans to achieve those aims. During the implementation stage, the government will ensure the equitable use and redistribution of land that is currently being used both for agricultural and non-agricultural purposes including land that:

- has been assigned categories, which have now expired, such as land previously categorised as “Right to Farm” or “Right to Build”;
- was originally forested;
- has been mined;
- has not be certified; and
- is owned by communities.

Coal and Coal Based Products: New Export Regulations

by Pratiwi Widyastuti



The Minister for Trade recently issued legislation that introduces new procedures relating to the export of coal* (**Regulation No. 95**). Regulation No. 95 states that certain coal and coal-based products may now only be exported by those organisations that have been approved as Registered Coal Exporters, or ET-Batubara, by the Minister for Trade.

Regulation No. 95 includes certain administrative changes including updated documentation requirements when applying for certain types of mining and production licences. Further, Regulation No. 95 states that coal and

coal-based products for export must be checked by a government appointed surveyor prior to export. There are also new reporting requirements - including the requirement for certain types of exporters to submit a report both at the point of export and after the successful export.

Penalties for submitting false information in a report can include the revocation of a licence.

**Regulation issued by the Minister for Trade Number 39/M-Dag/Per/7/2014 concerning the Provision on Export of Coal and Coal Products, as amended by Regulation of the Minister of Trade Number 95 of 2018.*

Letters of Credit: Exporting Minerals, Coal, Oil and Gas, and Palm Oil

by A.A.A. Reditha Saras



On 6 September 2018, the Minister for Trade issued new regulations relating to the use of letters of credit to export certain commodities* (**Regulation No. 94**). The purpose of Regulation No. 94 is to ensure stability; both in foreign earnings and the export price of specific goods.

Regulation No. 94 covers the export of mineral, coal, oil and gas, and palm oil. In order to export those goods, exporters must pay for them with a Letter of Credit. Regulation No. 94 sets out procedures on how to set the price for the exported goods in the Letter of Credit. Generally, this will be the lowest global market price.

The Letter of Credit must be paid into the Indonesian Foreign Exchange Bank or any institution put forward by the government. The exporter must include a copy of the Letter of Credit in the Export Declaration (*Pemberitahuan Ekspor Barang/PEB*). In addition, the exporter must submit a letter to the relevant government surveyor that includes a statement of all the goods to be exported and proof that the appropriate stamp duty has been paid. Prior to export, the government appointed surveyor may carry out searches to verify the information in the letter.

An exporter must submit an export report to the Directorate General of Foreign Trade and Export (*Laporan Realisasi Ekspor*). Any exporter who fails to submit a report may have their export or business licence suspended.

Regulation No. 94 does not apply to goods to be exported:

- as samples;
- for research and development purposes; and
- for promotion purposes, for example, to be displayed at foreign exhibitions.

Regulation No. 94 is amended with Regulation No. 102 of 2018 (Regulation No. 102). The amendment is removing oil and gas from the list of specific goods.

* Regulation of the Minister for Trade No. 94 of 2018 regarding the Use of Letters of Credit for the Exportation of Specific Goods.

New Regulations on Share Divestment in the Mining Industry

by Qaulam Enggartias Putra

On 25 September 2018, the Minister for Energy and Mineral Resources enacted a new regulation, bringing in new changes to the way shares in mining companies can be divested* (**Regulation No. 43**). The purpose of the Regulation No. 43 is to streamline and improve procedures in relation to the divestment of shares. Regulation No. 43 also aims to ensure that Indonesians are the majority shareholders in foreign companies that carry out coal and mineral mining in Indonesia.

Regulation No. 43 sets out the number of foreign shares that must be offered for sale to Indonesian government organisations. It also sets out various methods for the divestment of a majority stake, which include through:

- the issuance of new shares; or
- the transfer or sale of existing shares both directly and indirectly.

Regulation No. 43 includes a number of new procedures on the valuation of shares to be divested including, in certain circumstances, taking into account mineral and coal reserves.

The new regulation also introduces the abolition of compulsory auctions for shares if the government does not wish to buy the shares. Mining permit holders or Companies may now sell shares directly to State Owned Enterprises and local Regional Government-Owned Enterprises.

In addition, the new regulation specifies that the Minister for Energy and Mineral Resources can discuss share divestment directly with Indonesian government organisations.

The new legislation introduces procedures that require certain types of mining permit holders to allow Indonesian organisations access to their businesses to carry out due diligence.

The new regulation also introduces the procedure for determining the price of divested shares. The price of di-



vested shares is based on the highest offer received by Indonesian government organisations or government appointed companies, which is determined by auction.

Furthermore, the price of divested shares is calculated based on Fair Market Value. This new regulation presents two methods for calculating Fair Market Value, which are based on:

- the projected cash flow, discounted, of the company from the time of the divestment until the expiry of the company's operation permit; and
- market data benchmarking.

** Ministry Regulation No. 43 of 2018, which amends Regulation Number 9 of 2017 on the Divestment of Shares in Mineral and Coal Mining Companies.*