



Electricity Supply and Management: New Laws

by Fidi Hania



The Government has amended the Electricity Law,* which focus on electricity supply management from Central and Regional Government and licensing. There are no major changes but to centralizes and simplifies the requirements to become an electricity supplier by streamlining licensing procedures and centralizing the supervising/issuing authorities.

For licenses, Business Entities will only get **Business License/Perizinan Berusaha** issued by the Central or Regional Government. The related norms, standard, procedures and criteria of the Business License will then be stipulated by the Central Government.

For criminal sanction, there's a new addition related to building construction. Business entities could be sanctioned up to 3 (three) years and fine up to Rp 1 Billion for any person that construct/leave building and/or plants something that:

- Has been indemnified as referred to Article 30 paragraph (2) and/or compensated as referred to Article 30 paragraph (3) by the electricity supply business license holders;
- Entry a free space or minimum distance around electricity lanes; and/or
- Endanger safety and/or disrupt with the reliability of electricity supply.

* Law No. 11 of 2020 concerning Job Creation jo. Law No. 30 of 2009 concerning Electricity.

Finance Companies: New Regulations

by Rizki Hendarmin

The Financial Services Authority (the **FSA**) has issued new regulations on obtaining a licence to run a conventional or Sharia financing company. (the **Regulations**).* All previous regulations on the topic are revoked.**

The Regulations state that all finance companies must be established as limited liability companies, abolishing the right for finance companies to establish as cooperatives. The companies must have a paid-up capital of at least IDR 250 billion (approximately USD 17 million), more than doubling the paid-up capital required under the previous regime.

The Regulations set out rules as to who is allowed to own shares in the limited liability finance companies. For example, under the new Regulations, foreign citizens are now allowed to own shares in finance companies but only through stock exchange purchase. The new Regulations also focus on the funding sources for the purchase of shares – with money gained through illegal activities prohibited.

The new Regulations introduce new criteria for controlling shareholders – that is - prior to becoming a controlling shareholder in a finance company, with some exceptions, a legal entity must have been operating a business for at least two years.

The Regulations set out rules for finance companies which appointed foreign citizens as members of the executive institutions (i.e. the Board of Directors and/or the Board of Commissioners) to also appoint Indonesian nationals so that the composition of the executive institutions shall be at least 50% represented by Indonesian nationals. Finance companies which already operate before this Regulations were issued shall fulfil the requirements of having its Board of Commissioners to be filled at least 50% by Indonesian nationals before 26 November 2022.

* FSA Regulation No. 47/POJK.05/2020 on the Business Licensing of Financing Companies and Sharia Financing Companies.

** FSA Regulation No. 28/POJK.05/2014 on the Business Licensing of Financing Companies.

Taxation on Foreign Digital Products and Services

by Fidi Hania



To ensure that all digital product and service providers, whether foreign or Indonesian, are operating on the same playing field, the Ministry of Finance has issued new regulations relating to tax on foreign digital products and services.* These Regulations took effect on 1 July 2020.

The new Regulations impose a 10% VAT on all goods and services sold online in Indonesia from outside Indonesia. The Regulations cover goods and services such as entertainment streaming services, gaming and online magazines. Generally, the Regulations require VAT to be collected and provided to the Ministry of Finance by the supplier of the goods and services.

To become VAT collectors, E-Commerce must met the following criteria:

- the value of the goods or services sold in Indonesia exceeds IDR 600 million in any 12 month period or IDR 50 million in any one month period; or
- the traffic/access to the site exceeds 12, 000 in any 12 month period or 1000 in any one month period.

If they met the criteria, the Tax Office will then issued Tax Identity Number to identify Business Entities as VAT collectors.

* Regulation of The Minister for Finance of the Republic of Indonesia Number 48/PMK.03/2020 concerning the Procedures for the Appointment of the Collectors, Collection, Remittance, and Filing of Value Added Tax on the Use of Intangible Taxable Goods and/or Taxable Services from Outside of the Customs and Excises Territory within the Customs and Excises Territory through Electronic Commerce.

** Regulation of the Director General of Taxes No. PER-12/PJ/2020 on the Thresholds for Collectors and the Appointment of Collectors and in relation to Collection, Remittance, and the Filing of Value Added Tax for Intangible Taxable Goods and/or Taxable Services provided by e-commerce within Indonesia from Outside of The Customs and Excises Territory.

Indonesia Investment Agency: New Asset Management Regulations

by Hans Thioso



The Government has issued new regulations governing the asset management of the Indonesian Investment Agency (the IIA, or in Indonesian, *Lembaga Pengelola Investasi*).*

The IIA is an institution that is given special authority to manage the assets and investments of the central government to ensure that they are properly administered. The assets managed by the IIA include paid up capital on companies owned by the state, investment returns, assets of state-owned enterprises, grants and/or other legitimate sources of funds including those obtained from debts, loans, bonds and other credit facilities. The IIA manages these assets according to the principles of transparency, accountability and good governance.

The Regulations set out in detail the actions that the IIA is permitted to undertake, which includes:

- managing assets in cooperation with certain third parties;
- establishing and/or investing in managed funds; or
- issuing or receiving loans in the form of credit, debt or other types of loans that meet certain risk analysis criteria.

Further, the Regulations allow the IIA to pledge its assets as collateral or as a guarantor in certain circumstances.

The Regulations list how any profits should be used including for contribution to the IIA's mandatory reserve. The Regulations also set out the details of when the IIA's profits may be shared with the government and when the government can increase the IIA's capital.

According to the Regulations, the IIA can only declare bankruptcy if it meets certain strict requirements including testing carried out by an independent agency appointed by the Minister for Finance.

*Governmental Regulation Number 74 of 2020 concerning the Indonesia Investment Agency. This Regulation was issued in accordance with Law Number 11 of 2020 concerning Job Creation.

Financial Services Authority: New Developments in Alternative Dispute Resolution

by Hans Thioso

In December 2020, the Financial Services Authority (the FSA or in Indonesian, *Otoritas Jasa Keuangan*), issued Regulation 61* relating to alternative dispute resolution institutions in the financial services sector (ADR Institutions, or in Indonesian, *Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan*). Regulation 61 revokes previous regulations on the topic.**

Before Regulation 61, Indonesia had six ADR Institutions. Each ADR Institution had its own specialist area, for example, insurance, capital markets, pension funds, etc. Consequently, each had its own standards and procedures for resolving disputes and parties were not able to use these institutions to resolve cross-sector disputes in the financial services sector.

Regulation 61 establishes a single institution for alternative dispute resolution across all financial services sectors. The new ADR Institution began operations on 1 January 2021. Dispute resolution via the new ADR Institution is carried out by a mediator or an arbitrator either in person or via electronic media. All dispute resolutions are confidential.

Regulation 61 states that disputes that meet the following criteria may be submitted to the new ADR Institution for resolution, those that:

- cause loss and/or potential loss for consumers due to breach of agreements;
- have not been solved despite the efforts of both or either party;
- are not already the subject of a proceeding in court or some other institution; and
- are civil in nature.

In addition, the new ADR Institution may be given jurisdiction by the FSA to solve disputes that fall outside the criteria.

The six existing ADR Institutions will be merged into the new ADR Institution.

However, all disputes submitted to each separate institution prior to 1 January 2021 will still be dealt with by the individual institution to which it was submitted.

Under Regulation 61, any business entities in the financial services sector that are registered and supervised by the FSA must become a member of the new ADR Institution. Membership requires members to pay the membership fees; publish information about the new ADR Institution through its communication channels; and abide by the decisions of the ADR Institution. Any members that violate these conditions may receive a written warning, a fine or have their business activities restricted or suspended.

*FSA Regulation No. 61/POJK.07/2020 concerning Institutions for Alternative Dispute Resolution in the Financial Services Sector.

** FSA Regulation No. 1/POJK.07/2014 concerning Institutions for Alternative Dispute Resolution in the Financial Services Sector.

Equity Crowdfunding: New Regulations

by Rahmi Intan Jeyhan



The Financial Services Authority (the *FSA*) has issued new regulations on electronic crowd funding.*

The new Regulations broaden the definition of equity crowdfunding to include the offering of equity-based securities (in the form of shares or similar), debt-based securities and *Sukuk*, a sharia-compliant bond-like instrument. The new Regulations set out detailed criteria in relation to debt-based securities and *Sukuk* before they can be offered to consumers via electronic crowdfunding.

In addition, the regulations set out the maximum time frame for the offer (reduced from 60 to 45 days) and list the criteria for staged offerings.

The Regulations give the FSA the authority to include other types of securities that may be offered through equity crowdfunding.

The requirements to become an issuer on an equity crowdfunding platform have also been simplified. The previous requirement to be a limited liability company has been abolished and other business entities may become issuers. The hope is that these new rules will stimulate economic growth as typically in Indonesia many small to medium enterprises are not limited liability companies. The new Regulations open the door to these smaller enterprises to seek funding in this way.

Secondary markets are also covered in the new Regulations. Eligible companies may provide investors with a system to trade the securities they have obtained via equity crowdfunding so long as certain criteria are met.

* Regulation No. 57/POJK/04/2020 on Securities Offerings Through Information-Technology-Based Crowdfunding Services. This regulation revokes No. 37/POJK.04/2018 on Crowdfunding Services through Information Technology-Based Stock Offerings.

Electronic Systems: New Regulations for Private Operators

by Rizki Hendarmin

The Minister for Communications and Information Technology (the **Minister**) has issued new regulations governing private operators of electronic systems such as websites, web portals or other online systems that the public can interact with.*

The new Regulations require almost every entity that operates an electronic system (such as websites) in Indonesia to register with the Minister. The definition of electronic systems covers a wide variety of systems that interact with the public including electronic selling/trading, delivery of digital content, communication platforms, search engines and personal data processing.

The Regulations also require private operators to provide information and access to their electronic systems and data to the government and law enforcement institutions. Information that may be requested includes access audit trails. Someone must be available in Indonesia to ensure communication with the government runs smoothly.

The Regulations require that all operators must register with the Minister before the system is made live. Electronic systems already operating must register by 24 May 2021. Failure to register and to comply with the provisions of the new Regulations may result in the system being blocked for access in Indonesia.

* Minister for Communications and Information Technology Regulation No. 5 of 2020 on Private Scope Electronic System Operators. This Regulation implements Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions and revokes the Minister for Communications and Information Technology Regulation No. 19 of 2014 on the Handling of Internet Sites with Negative Content and the Minister for Communications and Information Technology No. 36 of 2014 on Electronic System Operator Registration Procedures.

Consumer Protection: New Regulations

by Rahmi Intan Jeyhan

On 22 December 2020, Bank Indonesia issued new regulations on consumer protection (the **Regulations**).* While the previous regulations** cover consumer protection in relation to payment systems, the new Regulations cover consumer protection across all sectors under Bank Indonesia's authority including monetary, macroprudential, and payment systems. The new Regulations apply to all organisations that are regulated and/or supervised by Bank Indonesia as well as their customers.



The Regulations set out the obligations of organisations to protect its customers including:

- providing special services for customers with special needs;
- increasing customer literacy;
- confidentiality, data security and risk management obligations; and
- clear complaints and dispute resolution procedures.

The Regulations also contain reporting obligations.

Organisations that breach the obligations may be subject to administrative sanctions in the form of written warnings, temporary suspension, and license revocation.

* Bank Indonesia Regulation No. 22/20/PBI/2020 of 2020 on Consumer Protection of Bank Indonesia.

** Bank Indonesia Regulation No. 16/1/PBI/2014 of 2014 on Consumer Protection in Payment System Service (revoked by the Regulations).