

Indonesia Regulatory Update

December 2016



Regulatory Highlights

This publication sets out to highlight at summary level, some of the key current regulatory changes in Indonesia. These important changes have implications for industry, covering a wide range of industries and within these, specific and complex business processes. For further details on any of the items covered, a listing of KPMG Contact Points for further discussion is included at the end of the document. If you wish to receive a full research pack of all of the Indonesia regulatory change then please contact Susanto, contact details provided at the end of this document. Hyperlinks to the source documentation (Bahasa Indonesia for most items) are provided as appropriate.

Regulatory updates covered in this publication are as follows:

- Provisions on the Offering of 10% Participating Interest in Oil and Gas Operational Areas
- Land and Building Tax Reduction in the Exploration Stage of Geothermal Operation
- Electronic Information and Transaction
- Protection of Personal Data in Electronic Systems
- Several Regulations Related to Commercial Banks
- Deferred Public Offering

Energy and Natural Resources Sector

Provisions on the Offering of 10% Participating Interest in Oil and Gas Operational Areas

Ministry of Energy and Mineral Resources ("MEMR") Regulation No. 37 of 2016 stipulates the obligation of Production Sharing Contract ("PSC") Contractor to offer a mandatory 10% Participation Interest ("PI") to a Regionally-Owned Enterprise ("Badan Usaha Milik Daerah" or "BUMD") upon securing approval for any Plan of Development ("PoD") from the Government. Through this mandatory PI offer, the selected BUMD will participate in the management of the working area.

In the event when no BUMD is interested to participate or if the BUMD cancels its offer, then the contractor is required to offer the 10% PI to State-Owned Enterprise ("Badan Usaha Milik Negara" or "BUMN").

The BUMD eligible for the 10% PI must meet the following criteria:

- a. The BUMD is in the form of a regional company which is fully owned by regional government or by a limited-liability company in which 99% of the shares are owned by the regional government and another 1% is owned by an affiliated regional government;
- b. The BUMD was established through regional regulation;
- c. The BUMD must not conduct in any business other than managing the PI.

This regulation has come into effect since 29 November 2016.

(Issued regulation in Bahasa: [MEMR Regulation No. 37 of 2016](#))

Land and Building Tax Reduction in the Exploration Stage of Geothermal Operation

Ministry of Finance ("MoF") Regulation No. 172/PMK.010/2016 stipulates land and building ("Pajak Bumi dan Bangunan" or "PBB") taxpayers of geothermal operation in the exploration stage can be granted a reduction of PBB. Same treatment has been granted earlier for Oil and Gas upstream activities through the issuance of [MoF Regulation No. 267/PMK.11/2014](#) dated 31 December 2014.

The PBB reduction is granted 100% of the total tax payable stated in the Notification of Tax Payable ("Surat Pemberitahuan Pajak Terhutang" or "SPPT"). Taxpayers that can be granted the reduction of PBB are the Taxpayers that meet the following conditions:

- a. having a Geothermal License after the enforcement of [Law No. 21 year 2014](#) on Geothermal;

- b. submitting the Tax Object Notification Letter ("Surat Pemberitahuan Objek Pajak" or "SPOP"); and
- c. attaching a recommendation letter from the Minister that is responsible for geothermal operation that states the object of the Geothermal PBB is still in Exploration Stage.

The reduction of PBB each year for maximum period of five years (which can be extended for another two years), commencing from the Geothermal license is published. The two years extension can be provided as long as a recommendation letter from the Minister is obtained.

Based on the SPOP and the recommendation letter, the Tax Office will issue the SPPT that states the amount of PBB reduction. The inclusion of the reduction amount in SPPT is treated as proof of the PBB reduction granted.

The PBB reduction is granted to any SPPT commencing in Fiscal Year 2017.

(Issued regulation in Bahasa: [MoF Regulation No. 172/PMK.010/2016](#))

Communication, Information and Technology

Electronic Information and Transaction

Law No. 19 of 2016 is the amendment of [Law No. 11 of 2008](#) regarding Electronic Information and Transactions. The new Law obliges Electronic-System Provider to erase any irrelevant electronic information and documents ("E-IDs") under the request of the information owners based on court decision. Consequently, all Electronic-System Providers are required to provide the mechanism for the deletion of any irrelevant E-IDs. Provisions on the deletion mechanism will be further addressed by the forthcoming government regulation. The new Law allows Government to directly cut access to any prohibited E-IDs and/or request any Electronic-System Provider to undertake such action.

The new Law amends the sanctions which can be imposed upon any unauthorized parties who:

1. Intentionally distribute, transmit and/or provide access to E-IDs which contain insults or defamations, and
2. Intentionally transmit E-IDs which contain threats of violence or frightening or upsetting information (including cyber bullying)

The new sanctions will impose a four-years imprisonment and/or IDR750 million in fines.

(Issued regulation in Bahasa: [Law No. 19 of 2016](#))

Protection of Personal Data in Electronic Systems

Ministry of Communication and Informatics Regulation No. 20 of 2016 on Personal-Data

Protection within Electronic Systems is the implementation of [Government Regulation No. 82 of 2012](#) on the Organization of Electronic Systems and Transactions.

This Regulation stipulates Electronic-Systems Provider to first secure consent from the personal-data owner before utilizing any of the personal data in question. The consent form provided to the personal-data owner must be printed in Indonesian language. Personal data may only be utilized in certified electronic systems and must be treated as confidential information.

This regulation sets a number of protection measures which must be implemented by Electronic-Systems Provider at every stage of personal data management, namely: receipt and collection; processing and analysis; storage; display; announcement; transmission; dissemination; opening of access and erasure of any personal data.

The protection measures include, among others: requirement to encrypt personal data; time limit to retain personal data in the system; requirement to open data centers and disaster recovery centers in Indonesia for the purpose of data protection; and requirement to coordinate with the Ministry of Communication and Informatics regarding cross-border data exchange.

This regulation has come into effect as of 1 December 2016. Electronic-Systems Provider which has undertaken any of the protection measures must comply with the provisions set out under this regulation within two-year after the regulation come into effect.

(Issued regulation in Bahasa: [Ministry of Communication and Informatics Regulation No. 20 of 2016](#))

Financial Services and Capital Market Sector

Several Regulations Related to Commercial Banks

During December 2016, Financial Service Authority ("Otoritas Jasa Keuangan" or "OJK") had issued several new regulations related to commercial banks, which revoke the previously issued Bank Indonesia ("BI") regulations on the same topics. Some of these newly-issued OJK regulations are:

a. **38/POJK.03/2016: Application of Risk Management in the Use of Information Technology by Commercial Banks**

This OJK Regulation revokes [BI Regulation No. 9/15/PBI/2007](#), and has come into effect as of 7 December 2016. Some of the significant changes covered in this regulation, which are either amendments or new requirements, are as follows:

- Banks are required to have policies, standards, and procedures related to

the Information Technology ("IT") risk management (article 10), and are required to review and update the policies, standards and procedures related to the IT implementation on a timely basis (article 8 and 9).

- Banks are required to conduct internal audit on IT implementation minimum once a year and are required to ensure the availability of audit trail on all IT activities for the purposes of monitoring, verification, and other examinations (article 18).
- Banks are required to open data centers and disaster recovery centers in Indonesia. Article 21 further regulates the requirements related to data centre and disaster recovery center.
- Amendment of electronic banking regulations (article 28).
- Amendment of regulations which related to the deadline of IT reporting (article 30).
- Additional regulations which related to the approval request and realization report (article 32).
- Requirements for banks that have implemented IT Risk Management to comply with the provisions set out under this regulation no later than 12 months after the regulation come into effect.

b. [55/POJK.03/2016](#): Implementation of Governance for Commercial Banks

This OJK Regulation revokes [BI Regulation No. 8/4/PBI/2006](#) and [8/14/PBI/2006](#). This regulation and has come into effect as of 9 December 2016. Some of the significant changes covered in the OJK regulations, which are either amendments or new requirements, are as follows:

- Requirements for Non-Independent Commissioner in order to become Independent Commissioner (article 25), and requirements for the reappointment of Independent Commissioner who has served 2 period consecutively (article 26).
- Additional duties and responsibilities of Remuneration and Nomination Committee (article 49).
- Exclusion of three requirements from the Good Corporate Governance ("GCG") implementation report: remuneration package and other facilities for Board of Commissioners; share option owned by Commissioners, Directors and Executive Officers; and salary ratio (article 64).
- Requirements for banks to submit the GCG implementation report and publish it in the

bank's website within 4 months after the financial year end (article 65).

c. [56 /POJK.03/2016](#): Commercial Banks Shareholder

This OJK Regulation revokes [BI Regulation No. 14/8/PBI/2012](#), and has come into effect as of 9 December 2016. There are no significant changes covered in this regulation, except for the transitional rules as stated in article 22. The Transitional rules are:

- Banks with soundness / GCG level 3-5 should adjust the maximum shares ownership at the latest by 1 January 2019. Banks, which soundness / GCG level after 1 January 2014 had been downgraded to level 3-5 from previously level 1-2 or whose shareholders sold their shares based on personal intentions, should adjust the shares ownership within 5 years after the last appraisal period or the sale of shares.
- Requirements for banks to report the shares ownership adjustment plan to OJK (as stated in Article 16).
- Imposition of sanctions to shareholders those do not fulfill the requirement of maximum shares ownership obligation (as stated in Article 17).

Deferred Public Offering

OJK Regulation No. 52/POJK.04/2016 on the Procedure for Deferred Public Offering superseded Capital Market Supervisory Agency ("Bapepam") Decree No. Kep-45/PM.1996, as well as Bapepam Rule No. IX.A.4 on the same topic.

There are no significant changes between the OJK Regulation and the Bapepam Regulation, except for the imposition of sanction.

OJK Regulation No. 52/POJK.04/2016 sets out the type of administrative sanctions, which will be imposed upon parties that violate the regulation. The sanctions include: written warning, fines, limitation of business activities, suspension of business activities, revocation of business license, cancellation of approvals, and/or cancellation of registrations.

In addition to the above sanctions, OJK may also impose other additional administrative sanctions against any party that violate the regulation.

This regulation has come into effect as of 7 December 2016.

(Issued regulation in Bahasa: [OJK Regulation No. 52/POJK.04/2016](#))

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