



## The Moratorium On Indonesian Fishing Licenses

by Anindia Kusuma

On 3 November 2014, a moratorium on fishing licenses was implemented under the Maritime Affairs and Fisheries Ministerial Regulation No. 56/Permen-KP/2014 (the "**Regulation No. 56/2014**"). The Regulation itself states that its objectives are to conduct responsible fishing activities and to eradicate the illegal, unreported and unregulated fishing in Indonesian fishing waters. The explicit inclusion of governance is notable and should be applauded, as this starts to get to the root causes of losses worth trillions Rupiah to the state and disadvantaged traditional fisherman.

The above-mentioned moratorium is applicable for:

- a. granting of new fishing licenses which are fisheries enterprise certificates (*Surat Izin Usaha Perikanan* or SIUP), fish-catching licenses (*Surat Izin Penangkapan Ikan* or SIPI) and fish-transport vessel licenses (*Surat Izin Kapal Pengangkut Ikan* or SIKPI); and
- b. extensions of existing fish-catching and fish-transport vessel licenses.

The moratorium is implemented for a period of six months as of the issuance of Regulation No. 56/2014, from 3 November 2014 to 30 April 2015. For fishing business, fishing licenses are compulsory in order for fisheries companies legally to carry out their fishing activities in Indonesian fishing waters.

Accordingly, with the enactment of Regulation No. 56/2014, it has become impossible for fisheries companies engaging in fishing activities in Indonesia's fishing zones by using fishing vessels manufactured abroad, to obtain the necessary approvals to commence and continue their business. The six months moratorium applies not only to the new fishing licenses but also to the existing fish-catching and fish-transport vessel licenses already granted to those fishery companies.

Under Regulation No. 56/2014, the existing fish-catching licenses and fish-transport vessel licenses will continue to be valid until they expire, and the Ministry of Marine Affairs and Fisheries is given responsibility for reviewing those licenses for compliance to the enforced rules. If there is any violation committed, companies will be punished by an administrative sanction in accordance to the enforced rules.<sup>1</sup>

The moratorium has been deemed as an effective strategy for achieving the goals of this moratorium, however there are several important issues that are not addressed in Regulation No. 56/2014, which include:

- a. the process that will be put in place regarding reviewing the existing licenses. A specific provision is required to increase transparency in reviewing the existing licenses or making information publicly available; and
- b. the implications for the application of fisheries enterprise certificates, fish-catching licenses and fish-transport vessel licenses that were submitted before the issuance of Regulation No. 56/2014 and which have only now obtained approval in respect of the applications. It is not clear whether the Ministry of Marine Affairs and Fisheries will continue to process the applications or whether they will refuse to do so. Regulation No. 56/2014 does



not provide retroactive effect and thus applications for fishing licenses that have proceeded to the stage where an approval has been granted, should be honoured. However, confirmation is being sought from the Ministry of Forestry in respect of their position on this;

- c. the implications for the expired fish-catching and fish-transport vessel licenses. Since fishing business cannot be carried out without these licenses, any business without them must be terminated.
- d. the implications for fishing companies that are punished by administrative sanctions; there are no details as to how this is to be implemented and in particular it is not clear whether the relevant fishing licenses could be re-applied for and re-issued, following compliance with the enforced rules.

The main purpose of Regulation No. 56/2014, as identified above, is to create time for the Ministry of Marine Affairs and Fisheries to develop new regulations that will lead to responsible and legal fishing activities whilst supporting economic growth and local work opportunities, such as:

- a. placing a quota for the monthly fishing time frame, fishing zones, size of fishing vessels, capacity of fishing vessels and the number of active vessels;
- b. no longer allowing foreign investment in fishing operations and instead recommending interested parties to invest in the local processing industry;
- c. all fishing operations will require onshore processing.<sup>2</sup>

While no one can criticize the Government's desire to conduct responsible fishing activities and eradicate illegal, unreported and unregulated fishing, the industry is again questioning whether this approach to dealing with such issues is the most appropriate way for the Government to proceed. Whether the moratorium will remain in place for 6 months or will be lengthened remains to be seen.

<sup>1</sup> Peraturan Menteri Kelautan dan Perikanan Republik Indonesia Nomor 56/Permen-KP/2014 tentang Penghentian Sementara (Moratorium) Perizinan Usaha Perikanan Tangkap di Wilayah Pengelolaan Perikanan Negara Republik Indonesia.

<sup>2</sup> <http://www.thejakartapost.com/news/2014/11/12/with-moratorium-place-susi-begins-massive-restructuring.html>

# "Green" Regulation by Ministry of Trade

by Rio Rahmat Hidayat

On 17 September 2014, the Ministry of Trade issued Regulation No. 55/M-DAG/PER/9/2014 regarding Imports of Goods Cooling Based System ("**Regulation**"). It will come into effect on 1 January 2015. The regulation is issued as an implementation of the Vienna Convention and the Montreal Protocol, which aims to carry out the elimination and reduction in production and consumption of hydrochlorofluorocarbon 22 Materials ("**HCFC-22**"), which are classified as Ozone Depleting Substances (BPO).



According to Article 3, imports of goods with cooling based systems containing HCFC-22 refrigerant will be banned, starting from 1 January 2015. This is because HCFC-22 is a chemical compound that serves as a refrigerant and potentially damages the ozone molecules in the stratosphere. Import policy on goods with cooling based systems - such as engine coolant temperature control

(which is unable to set its humidity separately), the refrigerator or freezer and its equipment, including heat pumps other than those used in the household, and containers with cooling equipment - can only enter through a designated port that mentioned in Article 4. Under this Regulation, this can only be undertaken by a company that has gained recognition as a Registered Importer of Goods Based Cooling Systems ("**IT-Goods**") from the Director General of Foreign Trade, which is valid for one (1) year.

Each of the goods about to be imported must first be verified by a surveyor at the loading port regarding its identity, specifications, type of refrigerant used, a description of the origin of the goods to be imported as well as the origin and destination of the goods. IT-Goods holders are obligated to: (i) provide correct data or information for such IT-Goods determination; (ii) carry out its obligation to submit a written report on their imports whether realized or not 2 times (twice) quarterly or every 3 (three) months, no later than the 15 (fifteenth) of the first month; (iii) does not make changes, additions and/or replacements to the determination of documents; (iv) does not commit criminal offences relating to the misuse of the determination.

Any violation of these obligations will be liable to a written warning to revoke the determination of IT-Goods, in which case the company obtain revocation by Director General of Foreign Trade, can only file again after one (1) year from the date of revocation (as referred to in Article 16).

# The IDX Regulation to Facilitate the Public Listing of Mining Companies

by Vinton Rasil Taris

The Indonesian Stock Exchange has now facilitated the market funding of Mineral and Coal Mining Companies ("**Companies**"). On October 20<sup>th</sup>, 2014 the Indonesian Stock Exchange ("**IDX**") issued Regulation No. I-A.1 ("**Reg I-A.1**") regarding the Listing of Equity Shares and Additional Shares Issued by the Company in the Field of Mineral and Coal Mining. The Regulation has been issued in order to encourage the growth of the mineral and coal mining industries in Indonesia and to provide protection to investors. This is a response to the need for distinctive provisions required to meet both objectives.

There are various categories of companies which can be listed on IDX. Those categories are;- companies engaged in the business of mineral and coal mining, or holding companies which have already established their Main Mining Income Contribution (where there is already consolidated revenue); or Companies that will earn their Main Mining Income Contribution at least in their 4<sup>th</sup> (fourth) year, based on financial projections. These companies, called Prospective Listed Companies (the "**Prospective Listed Company**"), may apply to be listed on the IDX, as can any company that is controlled under the Prospective Listed Company rules and has obtained a Mining Operation Production license or a Special Mining Production Operation License.

Every Prospective Listed Company has to satisfy the following requirements:

- a. Compliance with all regulations set by the competent authority in accordance with the type of mining activity of the Prospective Listed Company;
- b. Compliance with the listing requirements as set forth in Regulation No. I-A regarding the Listing of Equity Shares and Additional Shares Issued by the Company;
- c. Compliance regarding the amount of net tangible assets as set forth in Reg I-A.1;
- d. Has obtained the relevant Production Mining Licenses, Using Permit / Land – Use Permit and other permits related to the mining business from the relevant authorities;



- e. Compliance with the directorship requirements as determined in Reg I-A.1;
- f. Has proven and probable reserves based on a Competent Person Report;
- g. Has obtained a clear and clean certificate or other equal documents for the licensing of mining from the Directorate General of minerals and coal or other competent authority.

In addition to these requirements, there are also further requirements for the Prospective Listed Company which has conducted its operation phase but has not yet made any sales or started its production operation phase, as referred to in II.2.2. and II.2.3..

The newly-issued regulation has been effective since November 1<sup>st</sup>, 2014. It also stipulates special provisions regarding the duties of listed Companies. Listed Companies have to remain listed and comply with Regulation No. I-A regarding the Listing of Equity Shares and Additional Shares Issued by the Company. The Companies also have a duty to disclose their monthly report on the realization of their production operations plans, and information on their progress projections. This must be presented regularly - along with their annual financial statements- every year (annually) to the 5<sup>th</sup> (fifth) year since listing or from such time that the company makes a profit.

# New Insurance Law is Introduced

by Febi Jaya Conggih



The Insurance industry is undergoing significant growth in Indonesia. This is characterized by the increase in business volume and the utilization of insurance services in society. Insurance services products are becoming increasingly varied in line with the development of community needs for risk and investment management, both in personal life and in business activities. In this regard, the government of the Republic of Indonesia has enacted a new regulation in the insurance industry, namely Law No. 40, of 2014 on Insurance ("**Law No. 40/2014**"). Law No. 40/2014 revokes Law No. 2 of 1992 on Insurance Business and declares that it is no longer valid.

Insurance business can only be conducted by a limited liability company, cooperative, or joint ventures company. In respect of the joint venture company, only those existing before Law No. 40/2014 was enacted are recognized. To obtain an insurance business license, any insurance company, whether it is a limited liability company, cooperative, or joint ventures company, must comply with the requirements governed by the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") which concerns, among others, the articles of association, the guarantee fund, the product to be marketed, and also the feasibility of risk management systems.

Pursuant to Article 8 of Law No. 40/2014, before running an insurance business in the Republic of Indonesia, each party must first obtain a business license from the OJK. The business license requirement imposed is in accordance with the type of business that will be conducted, and governed by the requirements and procedures for business licensing set out in the OJK regulation. Insurance business

stipulated in Law No. 40/2014 covers conventional and general insurance business which is based on Islamic principles or sharia general insurance. General insurance business itself includes life insurance business and reinsurance business. An insurance business license application submitted by the insurance company will be checked within a period of 30 (thirty) days and approval or rejection of the application will be issued by the OJK.

Article 13 of Law No. 40/2014 stipulates that any insurance company, sharia insurance company, reinsurance, or sharia reinsurance company must establish at least 1 (one) controller in the enterprise. Determination of control is required so that the OJK may identify the parties held accountable, other than the directors and commissioners, in case of failure of the company to meet its obligations to policyholders, the insured, or other participants due to the influence of the parties in the management of the company. In other words, the controllers of the insurance companies are required to take responsibility for the losses of insurance companies, sharia insurance companies, reinsurance companies, or sharia reinsurance companies caused by those parties in control.

Beside that, Law No. 40/2014 also requires that an insurance company which is to cease its business activities must report their plans to OJK. The insurance company is required to first complete all its obligations prior to submitting the business cessation plan. In the event that the insurance company has met all of its liabilities, the OJK revokes its business license, thus obliging the insurance company to cease all business activities.

Furthermore, Law No. 40/2014 also sets restrictions regarding foreign ownership of insurance companies in Indonesia. Maximum limits and criteria for foreign shareholders in an insurance company will be further defined in the regulations set out by the OJK. OJK as the regulator also has the authority to grant approval or rejection of any transfer of ownership in the insurance companies. Basically, the transfer of ownership of the insurance companies cannot reduce the rights of the policyholder, the insured, or the participants, for the insurance company or sharia insurance company or reduce the rights of the insurer, reinsurer, or the manager of the reinsurance company, or sharia reinsurance company.