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COVID-19 Response of the Indonesian Government on Funding and Financial Support Measures

May 2020

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President Joko Widodo issued Government Regulation in lieu of Law of the Republic of Indonesia No. 1 of 2020 on the National Finance and Financial System Stability Policy for Handling Corona Virus Disease 2019 (COVID-19) Pandemic and/or in Order to Face Threats that Endanger the National Economy and/or Financial System Stability ("**Perpu 1/2020**"). Perpu 1/2020 was issued on, and has been effective from, 31 March 2020.

Perpu No. 1/2020 mainly stipulates new state financial policies, taxation policies, national economic recovery programs and financial system stability policies in connection with the management of COVID-19 pandemic and/or facing threats that endanger the national economy and financial system stability.

National Finance and Financial System Stability Policy for Handling COVID-19 Pandemic

State Financial Policies

With respect to implementation on state financial policies, the government has the authority to implement:

a. set a budget deficit limit exceeding 3% of the Gross Domestic Product during the period of handling Corona Virus Disease 2019 ("**COVID-19**") pandemic and/or in order to face threats that endanger the national economy and/or financial system stability through the end of 2022 Budget Year which the following year the deficit limit must be at a maximum of 3% of the Gross Domestic Product by gradual adjustment;
b. formulate adjustments of mandatory spending as stipulated in relevant laws and regulations;
c. shift budgeting between organizational units, functions and/or programs;
d. conduct actions setting expenditures on the state budget related to efforts in managing COVID-19 pandemic where such budget is not yet available or is not sufficient;
e. utilize budgets from remaining over budget, endowment funds and accumulations of education endowment funds, funds controlled by the state, funds controlled by public service institutions and/or funds from reductions of state capital investments of state-owned enterprises;
f. issue government bonds and/or Sharia government bonds for the purpose of COVID-19 to be purchased by Bank Indonesia, state-owned enterprises, corporate investors and/or retail investors;
g. establish sources of budget financing domestically and/or from overseas;
h. provide loans to the Indonesian Deposit Insurance Institution (*Lembaga Penjamin Simpanan* or "**LPS**");
i. prioritize allocation of budgets for certain activities, and/or adjustment of allocation and/or reduction/suspension of providing budget to regions and village funds under certain conditions.
j. provide grants to local governments; and/or
k. simplify mechanisms and simplification of documentation related to state finances.

These provisions will be regulated further through separate Minister of Finance regulation.

Taxation Policies

The corporate income tax rate will be reduced gradually from the currently applicable rate of 25% to 22% for fiscal year 2020-2021 and to 20% starting fiscal year 2022. Limited liability companies with at least 40% of their paid-up shares listed on the Indonesia Stock Exchange (*Bursa Efek Indonesia*) and satisfy certain requirements will be granted a further 3% deduction to their corporate income tax rate such that the rate applicable to them will be 19% for fiscal year 2020-2021 and 17% starting fiscal year 2022.

National Economic Recovery Program

In order to establish state financial policies and to save to the national economy, the Indonesian Government has the authority to conduct the national economic recovery program. This program is intended to protect, maintain and increase economic capabilities of business actors in formal and financial sectors. The program may be conducted through investment of state capital by state-owned enterprises, placement of funds and/or government investments and/or placing security with schemes as stipulated by the Government. Further mechanisms on this will be regulated by separate government regulations.

Financial System Stability Policies

The policy of financial systems stability grants authority to five main parties to conduct the following:

*The Financial Systems Stability Committee (Komite Stabilitas Sistem Keuangan, "**KSSK**")*

The KSSK is granted with the authority to conduct physical meetings or through utilization of information technology to formulate and establish steps on handling financial stability issues and to formulate schemes of providing support by the government in handling financial services institutions and financial systems stability that endanger national economy.

Further regulation on the above will be stipulated in a government regulation.

Bank Indonesia (the Central Bank)

To support the KSSK, Bank Indonesia is granted with the authority to:

- offer short-term liquidity loans and financing based on sharia principles to systemic banks or non-systemic banks;
- provide special liquidity loans to systemic banks in liquidity issues and do not fulfill short-term liquidity loans or financing based on sharia principles by the government and granted based on a KSSK decision;
- buy long-term government bonds and/or sharia state bonds in the primary market to handle financial system issues endangering the national economy, including for government bonds and/or sharia government bonds issued for the purpose of handling COVID-19;
- purchase/repo government bonds owned by the LPS as funding for handling bank solvability of systemic and non-systemic banks;
- regulate the obligation to receive and use foreign exchange, including provisions concerning the transfer, repatriation and conversion of foreign exchange; and
- provide access to funding to corporations/private companies by means of repo of government bonds or sharia bonds owned by corporations/private companies through banks.

Further regulation on the above will be stipulated in separate Bank Indonesia regulation.

LPS

To support the KSSK, the LPS is granted with the authority to conduct preparations on management and increasing intensity of collective preparation with the Financial Service Authority (*Otoritas Jasa Keuangan* – *"***OJK**") on handling bank solvability issues, to conduct actions on sale of government bonds owned to the Bank Indonesia, issuance of bonds, loans to other parties and/or loans to the government in the event the LPS is expected to handle liquidity issues in handling failed banks, to make decisions on to save or not to save a non-systemic bank deemed to be a failing bank, in consideration with economic conditions, complexity of bank issues, timeframe of such issue management, investor availability, and/or effectiveness of handling bank issues and to formulate and implement policies by taking into consideration the source of funds and/or purpose of the deposit as well as the value of the secured deposit.

Further regulation on the above will be stipulated in separate government regulations.

OJK

To support the KSSK, the OJK is granted with the authority to issue written orders to financial services institutions to conduct merger, consolidation, acquisition, integration and/or conversion, to establish exemptions for certain parties from the obligation to conduct the disclosure principles in the capital markets sector for the prevention and management of financial systems crisis and to establish provisions on utilization of information technology in general meeting of shareholders that is required by law to be conducted by financial services industry business actors.

Further regulation on the above will be stipulated in separate OJK regulation.

Government

To support the KSSK, the government is granted with the authority to provide loans to the LPS.

Further regulations on the above will be stipulated in separate Minister of Finance regulations.

Sanctions

Perpu 1/2020 stipulates sanctions for any person that ignores, fails to fulfill, does not conduct or hinders the implementation of the OJK's authority to issue written orders to financial services. Such person is subject to imprisonment at a minimum of four years and fine of a minimum of Rp10,000,000,000 (ten billion Rupiah) or a maximum of 12 years and fine of a maximum of Rp300,000,000,000 (three hundred billion Rupiah).

National Economic Stimulus

The OJK recently issued OJK Regulation No.11/POJK.03/2020 on National Economic Stimulus as a Countercyclical Policy of Coronavirus Disease 2019 Infection Impact ("**POJK 11/2020**"). POJK 11/2020 primarily is intended to support economic growth for debtors impacted by the COVID-19 pandemic, including for Micro, Small, and Medium Enterprises ("**MSME**") debtors, conducted through policies on asset quality determination and credit restructuring and financing. Based on POJK 11/2020, banks may implement policies to support the economic growth stimulus by conducting the above by still considering the implementation of risk management of banks and also having guidelines to establish debtors and MSME debtors based on the criteria and sectors impacted by COVID-19.

Asset quality determination by banks is in the form of commercial banks credit, financing on sharia commercial bank or sharia business units and/or other fund provisioning in commercial banks, sharia commercial banks, sharia business units, rural banks and/or sharia financing rural banks for debtors and MSME debtors with the limit not exceeding Rp10,000,000,000 (ten billion Rupiah) may be based on the diligence of principal amount payments and/or interest or margin/profit-sharing/*ujrah*.

Banks are also authorized to restructure credit or financing and the quality of the restructured credit or financing will be determined as "performing". The restructuring may be conducted for credits or financing that are granted before or after the relevant debtors are affected by the outbreak. Banks are also authorized to grant new credit or financing and/or other new funding to debtors and MSME debtors affected by COVID-19. Asset quality determination for the aforementioned new credit, financing and/or other funding will be done separately from the asset quality determination for the previous credit, financing and/or other funding.

Banks are also obliged to submit reports to the OJK if such banks conduct asset quality determination or credit restructuring. Such reports must be reported on April 2020, June 2020, September 2002, December 2020 and March 2021.

The policy implementation to support the economic growth stimulus for debtors including MSME debtors is valid until 31 March 2021.

Bank Funding Incentives

In the framework of COVID-19 management, Bank Indonesia issued Bank Indonesia Regulation No.22/4/PBI/2020 on Incentive of Bank that Provides Funding to Certain Economic Activity to Support Management of Economic Impact Due to Coronavirus Pandemic ("**PBI 22/2020**"). PBI 22/2020 enables Bank Indonesia to grant incentives to banks (in coordination with the government and/or relevant authorities) that provides funding for certain economic activities in the form of:

- credit or financing of export activities;
- productive credit import or financing;
- letter of credit;
- credit or financing MSME activities; and/or
- credit or financing for economic activities on other priority sectors determined by Bank Indonesia.

The incentives are granted monthly in the form of relaxation of daily *Giro Wajib Minimum* or GWM obligations, which is the minimum fund amount that is compulsory to be maintained by commercial banks, sharia commercial banks and sharia business units in which the amount is determined by Bank Indonesia. Further regulation on the mechanism of providing such incentives will be regulated further in separate Board of Governors of Bank Indonesia Regulation.

Incentives will be granted for banks that also have submitted monthly reports on funding that have been provided. Banks that fail to submit these reports correctly as stipulated in PBI 22/2020 are subject to written warnings from Bank Indonesia. In the event that a bank is deemed to have not provided funding as stipulated in PBI 22/2020 and has failed to fulfill the GWM obligations, is subject to sanctions under GWM provisions by Bank Indonesia.

The incentives will be valid from 16 April 2020 until 31 December 2020.

Tax Incentives for Taxpayers Affected by COVID-19

On 27 April 2020, the Indonesian Ministry of Finance issued regulation No.44/PMK.03/2020 of 2020 on Taxation Incentives for Taxpayers Affected by the Coronavirus Pandemic ("**MOF Regulation 44/2020**"). In force since 27 April 2020, MOF Regulation 44/2020 allows for the granting of incentives in the following forms:

- Article 21 Income Tax (*Pajak Penghasilan*, "**PPh**"): Under MOF Regulation 44/2020, Article 21 PPh received by employees that meet certain criteria will not be calculated as taxable income, and the Indonesian government will bear the costs of Article 21 PPh originally cut from such employees' income. This Article 21 PPh incentive is granted between the fiscal period of April 2020 until September 2020.
- Article 22 PPh: Taxpayers whose businesses fall within certain business sector classifications and possess Export-Oriented Import Facilities (*Kemudahan Impor Tujuan Ekspor*, "**KITE**") can apply for certificates of exemption to Article 22 PPh import collection. This incentive is granted for a period from the date of the issuance of the certificate until 30 September 2020.
- Article 25 PPh: Taxpayers whose businesses falls within certain business sector classifications and possess KITE may also be entitled to deductions in the amount of thirty percent (30%) with respect to their Article 25 PPh installments by submitting a notification of the amount of the Article 25 PPh installment deduction. This incentive is granted for a period from the date of the notification until 30 September 2020.
- Value-Added Tax (*Pajak Pertambahan Nilai*, "**PPN**"): Further to Article 22 PPh and Article 25 PPh incentives, the taxpayers that fulfill the criteria above and have submitted applications for refunds of periodic PPN returns would also be entitled to PPN incentives in the form of preliminary returns of tax overpayments as low-risk corporate taxpayers (*Pengusaha Kena Pajak*) which satisfy certain conditions. The application for this incentive is to be submitted by no later than 31 October 2020. This incentive is granted between the fiscal period of April 2020 until September 2020.

OJK's Written Orders on Handling Bank Issues

OJK Regulation No.18/POJK.03/2020 on Written Order on Handling Bank Issues ("**POJK 18/2020**") is issued as implementing regulation of article 23 (1)(a) of Perpu 1/2020. Article 23(1)(a) of Perpu 1/2020 granted the authority to the OJK to issue written orders to financial institutions to undertake mergers, consolidations, takeovers, integrations or conversions.

POJK 18/2020 regulates the issuance by OJK of such written orders to banks. Under POJK 18/2020, OJK has the authority to issue written orders to a bank (each a "**Written Order**") to:

- **Undertake** a merger, consolidation, integration or be taken over by another bank, if the bank that is the recipient of the OJK Written Order fulfils the following criteria:

  i. based on OJK's assessment, the bank is facing financial difficulties that may adversely affect the business continuity or is unable to handle existing or imminent pressure; or

  ii. its controlling shareholder does not have the ability to carry out efforts to strengthen the bank. Such efforts include, among others: (i) increasing and maintaining sufficient capital and liquidity levels; or (ii) undertaking consolidation efforts through bank consolidation schemes under OJK Regulation No. 12/POJK.03/2020 on Commercial Banks Consolidation (i.e. mergers, consolidations, integration or formation of bank business groups).

- **Accept** a merger, consolidation, integration or takeover with/of a bank if the bank that is the recipient of the OJK Written Order would have, after "accepting" such a merger, consolidation, takeover or integration, receive a bank soundness level, in the case of commercial banks and sharia commercial banks, of at least Composite Rating 3 (PK-3).

POJK 18/2020 does not clarify the difference between "undertaking" or "accepting" a merger, consolidation or integration, and our interpretation of the above, subject to further clarification from the OJK is as follows:

- **In the context of a Merger**, being a legal action of one or more banks (each a "**Merging Bank**") merging into another bank (the "**Surviving Bank**"), where all assets and liabilities of each Merging Bank are transferred by operation of law into the Surviving Bank and the Merging Bank dissolves by law, the bank served with a Written Order to "undertake" a merger would be a Merging Bank, while the bank served with a Written Order to "accept" a merger would be the Surviving Bank.

- **In the context of a Consolidation,** being a legal action of one or more banks (each a "**Consolidating Bank**") consolidating by way of establishing a new bank (the "**Newly Established Bank**"), where all assets and liabilities of each Consolidating Bank are transferred by operation of law into the Newly Established Bank and each Consolidated Bank dissolves by law, there are no differences between "undertaking" or "accepting" a consolidation and each bank served with such Written Order would be a Consolidating Bank.

- **In the context of an Integration**, being a legal action of an Indonesian branch of an offshore bank (Kantor Cabang Bank Luar Negeri, "**KCBLN**") having its assets and liabilities transferred to a bank (the "**Receiving Bank**"), the KCBLN served with a Written Order would be required to transfer its assets and liabilities to the Receiving Bank served with such a Written Order.

In issuing a Written Order, the OJK shall take into consideration the (idiosyncratic) condition of each bank and external conditions that affects the performance and condition of the bank in light of the COVID-19 pandemic which affects the financial system stability and other conditions that may pose a threat of an economic crisis. POJK 18/2020 is silent on the timing of when the OJK is able to issue such Written Orders.

Banks that are ordered to conduct any of the above must formulate an action plan further to the written order, which contains the process and timing of the required merger, consolidation, takeovers, or integration.

Banks and/or its main parties (including its controlling shareholder, board of directors and board of commissioner) that fail to comply in formulating the action plan will be subject to administrative sanctions in the form of written warnings, followed by further administrative sanctions:

- with respect to the bank, downgrade of status of the bank from commercial bank or sharia commercial bank to rural bank or sharia financing rural bank; and

- with respect to the main parties, prohibition to be a main party of a bank.

Commercial banks or sharia banks that were served the Written Order may be exempted from the obligations/requirements under provisions on single-presence policy, share ownership of commercial banks and/or timeline on core capital requirement fulfilment. Public banks that receive the written order may also be exempted from disclosure obligations by OJK's approval.

Other Financial Services

The OJK has also issued several countercyclical policies which apply to non-bank financial institutions such as (i) pension fund; (ii) insurance companies; (iii) and finance companies.

Pension Fund

Under the OJK Letter No: S-10/D.05/2020 dated 30 March 2020 ("**OJK Letter No: S-10/D.05/2020**"), the OJK's countercyclical policy has mainly set out the following:

- extending the deadline for submitting periodic reports of pension funds to the OJK;
- enabling the implementation of fit and proper tests against the primary parties of finance companies via video conferences;
- calculating the funding ratio for pension funds to the pension program defined benefit, assets which are in the form of:

  i. corporate bonds listed on the stock exchange;
  ii. *sukuk* or sharia bonds listed on a stock exchange;
  iii. securities issued by the Republic of Indonesia; and
  iv. Islamic securities issued by the Republic of Indonesia

  can be calculated based on the amortized value as long as it is not causing the quality of funding for pension funds to be higher than the quality of funding at the previous actuarial valuation.
- implementation of the life cycle fund provisions by the pension fund that organizes the program a defined contribution pension for pension fund participants who are 2 (two) to 5 (five) years from now at retirement age can be postponed for a maximum of 1 (one) year.

However, in implementing countercyclical policy above the pension fund institution has to take into account the application of prudential principle, risk management and good corporate governance principle.

Insurance Companies

The countercyclical policy for insurance companies which was issued by OJK through OJK Letter No.S-11/D.05/2020 dated 30 March 2020 mainly establishes similar policies which apply to pension fund institutions (e.g. extending the deadline for submitting periodic reports to the OJK, and enabling the implementation of fit and proper tests against the primary parties of finance companies via video conferences).

The main differences in the policy that applies to the insurance companies are:

- calculation of solvency level for insurance companies, sharia insurance companies, reinsurance companies, and sharia reinsurance companies which are in the form of:

  i. *sukuk* or sharia bonds which are listed on the stock exchange;
  ii. corporate bonds which are listed on the stock exchange;
  iii. securities which are issued by the Republic of Indonesia; and
  iv. sharia securities which are issued by the Republic of Indonesia,

  may be valued based on amortized acquisition value;
- restrictions on assets which are permitted in the form of non-investment in direct closure premiums invoice including coinsurance premiums invoice, reinsurance premiums invoice, *tabarru'* contributions invoice and direct closure *ujrah* including coinsurance contributions invoice, reinsurance contributions invoice and reinsurance *ujrah* invoice are extended from 2 (two) months to 4 (four) months since the maturity date, so long as:

  i. insurance companies, reinsurance companies, sharia insurance companies, and sharia reinsurance companies provide a deadline extension to policy holders/participants/customers for 4 (four) months; and

  ii. only applies to premiums or contributions which take effect on February 2020.
- assets arising from a financing lease contract may be recognized as assets which are permitted for a maximum of the liabilities arising from such financing lease contract.

Finance Company

Under the OJK Letter No. S-9/D.05/2020 dated 30 March 2020, OJK's countercyclical policy in response to the COVID-19 pandemic impact to Finance Companies includes:

- extending the deadline for submission of periodical reports applicable to finance companies;
- enabling the conduct of fit and proper tests against the primary parties of finance companies via video conferences;
- allowing finance companies to determine the collectability of financing up to IDR 10 billion extended to their debtors affected by the COVID-19 pandemic solely based on the promptness of payment for the principal amount and/or interest (or its equivalent); and
- allowing finance companies to restructure the financing which already extended to their debtors by taking into account the specified considerations, and to record the restructured financing as performing financing.

Conclusions

The OJK and Bank Indonesia have provided a series of policies which are intended to support Indonesian companies during COVID-19 through various stimuli which are being and will be implemented by various government agencies, banks, financial institutions and government.

Although the implementation of Perpu 1/2020 has yet to be broadened for other sectors, the Indonesia Government has promulgated various policies from tax, employment, import and export, financial and other-specific industry perspectives with the aim of helping businesses to survive, as well as the overall economic environment's recovery from the COVID-19 outbreak.

We encourage our clients to consider the opportunities presented by the Indonesian government carefully, while consulting with us if needed.

In addition, White & Case has carried out an analysis of global governmental responses to the COVID-19 crisis. These vary considerably from country to country and are being updated and amended regularly.

We have prepared an in-depth and nuanced analysis for various major jurisdictions and pulled together a global response team.

For useful information on COVID-19, please consult the Coronavirus section of www.whitecase.com.

Annex I

The applicable measures of POJK 11/2010 are generally described and compared below.

Applicable Policies	Key Points
	Eligible Beneficiary: Any debtor (including MSME) that experiences difficulties in fulfilling its obligations to the bank(s) due to COVID-19 outbreak which affected its ability either directly or indirectly in the economic sector including tourism, transportation, hospitality, trade, processing, agriculture, and mining ("**Affected Debtor**"), with loans of up to IDR 10 billion.
National Economic Stimulus under POJK 11/2020	**Supporting Measures:** <u>Asset quality determination</u> The asset quality of Affected Debtors based only on the timeliness of payments by the debtor, without considering other aspects. Before the enactment of the POJK 11/2020, Indonesian banks had to consider various aspects in addition to timeliness of payments, such as business prospects and financial condition of their debtors. <u>Loan Restructuring</u> Banks may restructure the credit or financing of Affected Debtors. Once the restructuring is approved, the debtor's loan will be considered as a performing loan. This will also be applicable to loans restructured prior to the enactment of the POJK 11/2020, as long as the restructuring is due to the effects of the COVID-19 outbreak. <u>Provision of new funding</u> As one of the methods to restructure debts, banks may provide additional funding. For funding up to IDR 10 billion, the credit quality determination is based on the timeliness of payments by the debtor. For funding above IDR 10 billion, the credit quality determination is based on the previously existing requirements under OJK regulations on asset quality.

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