

## New Head of National Land Agency Regulation on the Right of Cultivation

by Galih Adi Prasetya

As one of the land rights in Indonesia, the Cultivation Right has been regulated in multiple regulations such as Law No. 5 of 1960 on Basic Agrarian Principles and Government Regulation No. 40 of 1996 on the Cultivation Right, Right to Build, and Right to Use on Land. Although it has been ruled in several regulations, the provision regarding the Cultivation Right is still considered unqualified to fulfill the needs of society and solve the problems in Cultivation Right cases. Therefore, on 14 July 2017, the National Land Agency issued the Head of National Land Agency Regulation No. 7 of 2017 on the Procedure and Guidelines on the Appointment of the Cultivation Right ("**Regulation No. 7/2017**"). This regulation aims to give society a more comprehensive explanation of the right of cultivation, and also to codify the provisions regarding the Cultivation Right in Indonesia.



The Regulation No. 17/2017, governs more complete and comprehensive procedures on granting the Cultivation Right compared to previous regulations. For example, Regulation No.17/2017 set out a complete explanation on granting the Cultivation Right over State owned land (*Tanah milik Negara*), land rights (*Tanah Hak*), communal title land (*Tanah Ulayat*), State forest area

land (*Tanah Kawasan Hutan Negara*), and transmigration management right land (*Tanah Hak Pengelolaan Transmigrasi*). Moreover, Regulation No. 17/2017 also governs more specific provisions on the procedures of granting the Cultivation Right, which includes the measurement of the land, inquiry for rights, land inspection, appointment of rights, and rights registration.

Besides an upgrade from the previous provisions, Regulation No. 17/2017 also stipulates a new provision regarding monitoring and evaluation of the right of cultivation. In this new provision, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency has the authority to monitor and evaluate the implementation of Cultivation Rights, whether based on independent monitoring results or public reports. The monitoring and evaluation will be conducted periodically, starting 1 (one) year from the issuance of the Cultivation Right certificate.



## Guidance on the Issuance and Reporting of Asset Backed Securities in the Form of a Collective Investment Agreement

by Monica Sonya Ginanti

The Financial Services Authority has issued a new regulation concerning the issuance and reporting of asset backed securities, namely, Regulation of Financial Services Authority Number 65/POJK.04/2017 Year 2017 on Guidance on the Issuance and Reporting of Asset Backed Securities in the Form of a Collective Investment Agreement ("**Regulation**"). This Regulation became enforceable as of 21 December 2017.

Requirements for financial assets in an investment portfolio of a collective investment agreement for asset backed securities ("**Collective Investment Agreement**") are as follows: (i) shall be in the form of financial assets having or resulting in cash flow; (ii) financial assets could be legally owned and under management of the originator; and (iii) financial assets may be transferred independently to the Collective Investment Agreement. Such financial assets shall be obtained from the originator through the form of sale and purchase or exchange which causes no impact to the Collective Investment Agreement. The originator is only allowed to buy or exchange no more than 10% (ten percent) of the value of the financial assets which have already been transferred to the Collective Investment Agreement. Later, the investment manager will register those financial assets under the name of the custodian bank in the interest of the asset backed securities owner.

The Collective Investment Agreement shall be made before a notary who is registered with the Financial Services Authority. Furthermore, the asset backed securities shall be proven by certificate and such certificate may be issued in the form of a collective letter of asset backed securities. The asset backed securities may be offered through a public offering or not. If the asset backed securities are offered



through a public offering then the investment manager shall submit registration statements to the Financial Services Authority. The public offering may be carried out only if the registration statement becomes effective. The Investment manager shall also publish the prospectus which contains recent information when offering the Collective Investment Agreement to the public. In the event of the asset backed securities not being offered through a public offering, the investment manager is not obliged to submit a registration statement to the Financial Services Authority but must submit the following documents : (i) disclosure documents of the asset backed securities; (ii) the Collective Investment Agreement; and (iii) a specimen of the asset backed security certificates to the Financial Services Authority at the latest of 10 (ten) days after the Collective Investment Agreement has been signed.

The investment manager shall submit monthly and annual financial reports of the Collective Investment Agreement to the Financial Services Authority. All

members of the board of directors and the board of commissioners of the investment manager will be responsible for the validity of such reports. The monthly report shall be submitted no later than the 12<sup>th</sup> (twelfth) of the following month and the annual financial report shall be submitted no later than the 31<sup>st</sup> (thirty first) of March of the following year. The monthly report shall be submitted via the electronic reporting system provided by the Financial Services Authority, the website address of which is <https://aria.ojk.go.id/>, With regards to the annual financial report, if the Financial Services Authority has provided the electronic reporting system for this purpose, then the annual financial report shall also be submitted via this electronic reporting system.

The custodian bank is entitled to earn a commission fee as stated in the Collective Investment Agreement, which will be paid from the portfolio of financial assets of the Collective Investment Agreement. The investment manager or Financial Services Authority are entitled to replace the custodian bank with another party. Such replacement shall be reported to the Financial Services Authority at the latest of 5 (five) days after the replacement. The Financial Services Authority is entitled to replace the investment manager if the investment manager does not perform the obligations as stated in the governing law.

## Concession for Natural Gas in Oil and Natural Gas

by *Monica Sonya Ginanti*

The Minister of Energy and Mineral Resources (“**Minister**”) has issued a new regulation concerning natural gas in downstream business activities. Specifically, the regulation concerns business activities of natural gas conveyance, natural gas trade, and natural gas storage, which is henceforth to be made more transparent, accountable, competitive and fair, as stated in Regulation of Minister of Energy and Mineral Resources Number 4 of 2018 on the Exploitation of Natural Gas in The Downstream Business Activities of Oil and Natural Gas (“**Regulation**”).

The Directorate General, who is in charge of the supervision of oil and natural gas (“**Directorate General**”) will prepare a Master Plan for the transmission chain and national natural gas distribution (“**Master Plan**”). The Master Plan will consist of: (i) transmission segments; (ii) distribution chain location; (iii) facilities and infrastructures needed for the use of natural gas. Furthermore, the Master Plan shall also provide information on deadlines for development and operation along with infrastructure capacity. This shall be used as guidance for the development of a natural gas infrastructure, investment policy, and expansion of the domestic natural gas market.

Business activities relating to natural gas conveyance through pipes in transmission segments must be conducted by business entities who have obtained a business license for oil and natural gas conveyance, and also special rights for the transmission segment. Moreover, business activities in the distribution chain location and certain commercial locations shall be conducted by business entities who have obtained business licenses for oil and natural gas conveyance, special rights to the distribution chain location and the requisite commercial business licenses for oil and natural gas. Business activities relating to natural gas commerce through distribution other than pipes



are in the form of compressed natural gas and liquefied natural gas. Such business activities may be conducted by business entities who have obtained special rights to the distribution chain location and/or legal entities who have obtained a commercial business license for oil and natural gas commercial business activities, specifically that of compressed natural gas and liquefied natural gas.

Once the business entities have obtained a business license from the Minister, they can conduct business activities in natural gas conveyance other than pipes and business activities in natural gas storage. The scope of both business activities are: (i) conveyance of compressed natural gas; (ii)

conveyance of liquefied natural gas; (iii) compressed natural gas storage; and (iv) liquefied natural gas storage.

When it comes to price, the conveyance fee of natural gas through pipes, the sales price of natural gas for households and small customers will be determined by an authorized institution. Nevertheless, the sales price for those other than households and small customers will be determined by the Minister in accordance with governing law. The determination will consider the interest of the natural gas owner, the business entities who have obtained business licenses for oil and natural gas conveyance, and the natural gas consumer.



## The OJK Issues New Regulation on Public Offerings by Shareholders

by Vincent

On 21 December 2017, the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) issued OJK Regulation No. 76/POJK.04/2017 regarding Public Offerings by Shareholders (“**POJK No. 76/2017**”). POJK No. 76/2017 was promulgated on 22 December 2017 and replaces the Capital Market Supervisory Board (*Badan Pengawas Pasar Modal* or “**Bapepam**”) Rule No. IX.A.12, as attached to the decision of the Chairman of Bapepam No. Kep-05/PM/2004 regarding Public Offerings by Shareholders (“**Rule IX.A.12**”). Furthermore, this regulation became effective upon the promulgation date.



In general, both regulations set out detailed provisions on the procedures for public offerings by shareholders of public companies, including the submission of registration statements, prospectus, and public offering result reports. The new regulation, however, does not categorically “amend” those provisions under Rule IX.A.2. It renews

the Rule IX.A.12 by transferring all Bapepam terms to the OJK, and adding a provision on administrative sanctions.

The sanctions provision is set out in Article 22. Apart from criminal sanctions relating to capital markets, the OJK reserves the rights to impose the following administrative sanctions:

- a. written warning;
- b. penalty, by the payment of a stipulated amount of money;
- c. business activity restriction;
- d. business activity suspension;
- e. business license revocation;
- f. authorization cancellation; and/or
- g. registration cancellation.

The abovementioned sanctions may be imposed by the OJK with or without a prior written warning (letter (a)). The penalty sanction (letter (b)) may be imposed by the OJK exclusively or concurrently with the other sanctions. Moreover, the OJK may also announce administrative sanctions imposition to the public.

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