

Current Account Deficit: The Sixteenth Economic Policy Package in Indonesia

by Dedi Putra

According to a report, *Neraca Pembayaran Indonesia*, released by Bank Indonesia (the Central Bank for the Republic of Indonesia), from 2012, Indonesia has incurred a current account deficit. The current account deficit is used as a basis to determine the amount of currency in circulation. The deficit is due to a decrease in the capital outflow. In short, the number of imported goods is greater than exported goods. The Governor for Bank Indonesia has stated that one of the grounds influencing fund outflow is the trade war between America and China. The trade war will significantly impact global markets. As it turns out, Indonesia, which is the main business partner of China, will also be hit by its effects.



To help alleviate this imbalance, the Government has encouraged incoming foreign funds through the issue of government securities and shares. Pursuant to data issued by the Minister for Trade on 16 November 2018, the amounts are around [Rp] 48.1 billion. The Government has supported this inflow by passing the Sixteenth Economic Policy Package. The primary policy will be explained briefly.

1. The Expansion of Tax Holidays
The Government has included two new industries in its tax holiday programme; these are agriculture and digital technology, in particular, electronics. These tax holidays will stimulate growth in these industries and encourage export.
2. The New Negative Investment List
The Government has introduced a new Negative Investment List, which specifies which business activities

are either closed or conditionally open to foreign investment. The list provides more opportunities to foreign investors through increased participation in export and also facilitating investment in certain industries through mergers and acquisitions.

3. New Rules for Export Proceeds

The Policy Package stipulates that all export proceeds, especially from the export of natural resources, should be deposited into the Indonesian banking system. Entrepreneurs must open a special bank account (virtual account) in specified Indonesian foreign exchange banks. The purpose of this policy is to reduce current account deficit.

At the time of writing, however, none of these policies have been enacted into law. We encourage all stake holders in lobbying the government to implement these policies into law. We will keep you updated when any of these policies are implemented into law.

A New Spirit of Agrarian Reform in Indonesia

by Dedi Putra

Recently passed Presidential Regulation No. 86* (**Regulation 86**) ushers in a new regime of agrarian reform. Underlying this regulation is the government's desire to implement equality of possession and equality of ownership of land in Indonesia to ensure that all Indonesian people have the opportunity to own land. The purpose of Regulation 86 is to ensure that agrarian reform is carried out with fairness and in a way that ensures the greatest benefit to the greatest number of people.

Pursuant to the definition of agrarian reform, Regulation 86 requires that all agrarian reform must:

1. reduce ownership and use of land;
2. implement systems to help settle conflicts quickly and easily;
3. encourage environmental protection; and
4. improve the prosperity and welfare of the people.

To ensure that the values of Regulation 86 are enforced, the Central and Local Government must coordinate the development and implementation of any reform. In particular, focus will be on restructuring the use of, and access to, land. Article 6 of Regulation 86 will implement this focus by redistributing land and validating the asset, confirming its current use.

Land that will come under immediate scrutiny is land that is the subject of an expired land licence; that is, abandoned land. The National Land Agency has stated that there are around 7 million hectares of abandoned land. However, the use of only around 0.4 million hectares has been reviewed and reallocated. According to a report released by



non-governmental organisation, *Kon-sorsium Pembaruan Agraria*, redistribution of forested land has largely not yet been achieved.

Regulation 86 places the responsibility for agrarian reform firmly with the President. Such reform cannot be delegated to a Minister because insofar, the licensing is issued by the Minister that will be overlapped each others.

Further, all agrarian reform must be developed in consultation with local communities. Finally, Regulation 86 commits the government to the increase of funding for reform.

*The Presidential Regulation Number 86 of 2018 concerning Agrarian Reform.

Use of Letters of Credit for Exports of Certain Commodities in Indonesia

by Dedi Putra

The Minister for Trade (the **Minister**) plans to increase the cost of exporting certain products internationally. The Minister has passed legislation* to further that aim (**Regulation No. 94**).



Regulation No. 94 covers, among other things:

1. payment for certain products using a Letter of Credit;
2. the use of foreign exchange banks in domestic area and public financial institutions;
3. the submission and verification of statement letters (a letter used to confirm a validity of Letter of Credit's payment); and
4. reporting on export activities including the use of Letters of Credit.

Furthermore, Regulation No. 94 states that a Letter of Credit is a credit notice

that is issued by foreign exchange bank at request of importer and it is addressed to exporter through advising bank [in foreign countries] (according to Article 1, Paragraph 2 of Regulation No. 94). It is a mandatory instrument to export particular goods. Pursuant to Article 7, Paragraph 5 of Regulation No. 94, commodities comprise oil and natural gas, mineral, coal, and coconut palm. In the course of time, the provision has been amended by Regulation No. 102 of 2018 regarding Amendment on Regulation No. 94 (**Regulation No. 102**). As it turns out, those commodities have been reduced as follows: mineral, coal,

and coconut palm. The main reason in passing Regulation No. 102 was due to the Minister for the Energy and Mineral Resources** (**Letter**) issued a letter on 26 September 2018. The letter determines that sales of oil and natural gas are a part of state account. Those products have therefore revoked.

Indeed, previous export practices do not require using Letter of Credit's payment for those certain defined goods. Companies have therefore worried that Regulation No. 94 clashes with their current export practices. To reassure these companies, Article 11 of Regulation No. 94 sets out a grace period during which current export practices can be reconciled with the new requirements. During this time, the Minister will review the companies' current practices including valid contracts stipulating alternative forms of payment.

* Regulation No. 94 of 2018 concerning Use of Letters of Credit for Exports of Certain Commodities.

** Letter of the Minister for the Energy and Mineral Resources No. 3034/12/MEM.M/2018 concerning Use of Letter of Credits.

Mineral and Coal Mining: Divestment of Shares

by Galih Adi Prasetya

On 25 September 2018, Indonesia's Minister for Energy and Mineral Resources enacted a regulation setting out new procedures for the divestment of shares in mineral and coal businesses* (**Regulation 43**). The purpose of Regulation 43 is to streamline and improve procedures. It is important for the government of Republic Indonesia to regulate the divestment of shares to make sure the ownership of the coal and mineral mining business will be owned by Indonesian shareholders.



Regulation 43 brings in new processes and procedures including:

- a new procedure for divesting shares, which can be carried out by issuance of new shares or transfer or sell their existing shares;
- the abolition of compulsory auctions for shares if the government does not wish to buy the shares. Under Regulation 43, companies may now sell shares directly to State Owned Enterprises and local Regional Government-Owned Enterprises;
- new procedures that allow government organisations to buy divested shares including through the creation special purposes vehicles to purchase shares;
- new procedures that require certain types of mining permit holders to allow Indonesian organisations access to their businesses to carry out due diligence; and
- new regulations relating to the valuation of divested shares including being able to take into account mineral and coal reserves, in certain circumstances.

* Minister for Energy and Mineral Resources Regulation No. 43 of 2018 relating to the Divestment of Shares for Mineral and Coal Mining Businesses

Exportation of Coal: Further Legislative Amendments

by *Yohannes Halim*

On 19 September 2018, the Minister for Trade enacted further legislative amendments relating to the export of coal and coal based products (**Regulation 95**).



Regulation 95 states that certain coal and coal-based products may now only be exported by those organisations that have been approved as Registered Coal Exporters, or ET- Batubara, by the Minister for Trade.

Those organisations that are eligible for approval as Registered Coal Exporters are those that already hold certain types of mining related licences. The application for registration as a Registered Coal Exporter differs depending on the type of licence the applicant already holds. However, the application may require the inclusion of:

- the organisation's business registration number;
- a list of all relevant permits held by the applicant;

- certain financial information, which may include tax, royalties and details of sales and purchases.

ET-Batubara may be submitted electronically through <http://inatrade.kemendag.go.id>. The submission can only be conducted after obtaining an access right. If the requirements aforementioned have submitted completely and correctly, then the Directorate General for the Minister will accept the submission (no more than five days after the application being received). In the event of the submission is not complete and correct, then it will be rejected no later than three days from the date of the application being received.

* Minister for Trade Regulation Number 95 of 2018 on the Third Amendment to the Regulation of the Minister for Trade Number 39/M-DAG/PER/7/2014 regarding the Provisions on the Export of Coal and Its Products.

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