

CLIENT ALERT

2015 APRIL 14

Bank Indonesia Takes Steps to Bolster Rupiah Use

1. Introduction

Bank Indonesia (“**BI**”) recently issued a new regulation (the “**Regulation**”)ⁱ that puts meat on the bones of the controversial Rupiah-use provisions set out in the National Currency Law of 2009 (the “**Currency Law**”).ⁱⁱ The Regulation, which entered into effect on 31 March 2015 for cash transactions and will do so on 1 July 2015 for non-cash transactions, comes some six years after the Currency Law was enacted and finally clarifies the majority of the legislative provisions, while at the same time also establishing additional exceptions beyond those set out in the Currency Law. Its issuance should be seen against the backdrop of a worrying decline in the value of the Rupiah against the US Dollar as a result of uncertainty over the future direction of US monetary policy, as well as growing concerns over the course of economic policy at home. However, the Regulation makes it expressly clear that exemptions may be permitted having regard to the preparedness of businesses to use the Rupiah, business continuity, and investment and economic exigencies.

2. National Currency Law – Mandatory Rupiah Use

Before discussing the substance of the Regulation, it will be useful to first briefly describe the relevant provisions of the National Currency Law. As explained in an earlier AHP Client Update,ⁱⁱⁱ the Currency Law requires all transactions conducted within the territory of Republic of Indonesia to use Rupiah. Article 21 of the Currency Law stipulates that the Rupiah must be used for the following purposes:

- a. payment transactions;
- b. the settlement of other obligations that must be discharged using money: and / or
- c. other financial transactions

conducted within the territory of the Republic of Indonesia, save for: (a) transactions related to the national budget; (b) grants / donations given by or to a foreign party; (c) international trade transactions; (d) bank deposits denominated in foreign currency; and (e) international financing transactions.

Unfortunately, the Currency Law fails to elaborate on the precise scope of on the mandatory Rupiah-use requirement and the exemptions, giving rise to significant confusion and lack of clarity as to precisely when the Rupiah must be used and when it is permissible to use foreign currency (“**Forex**”) in payment and settlement transactions. For example, according to some government agencies, the legislation only applied to cash transactions, with non-cash transactions being excluded from its ambit. And, of course, of crucial importance, there was the question of whether Indonesian banks could extend forex-denominated loans to Indonesian companies?

The lack of clarity has now been resolved to a large extent by the Regulation, which reinforces the Currency Law requirements on the use of Rupiah for payment / settlement transactions and prohibits the refusal of Rupiah when tendered in payment. It also makes it clear that the Currency Law’s Rupiah-use provisions apply to both cash and non-cash transactions.

3. Exemptions from Mandatory Use of Rupiah in Payment / Settlement Transactions

The Regulation significantly fleshes out the exemptions provided for by Article 21 of the Currency Law. Of particular interest is Article 8(1) of the Regulation, which explains that the international trade exemption covers:

- a. import/export of goods (to/from Indonesia);
- b. cross-border trade transactions in the form of the cross-border supply of goods, such as goods purchased online from another country;

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- c. cross-border trade transactions in the form of the cross-border supply of services (referred to in the Regulation as “consumption abroad”), such as payments for services provided in another country, as in the case of an Indonesia studying or receiving medical treatment abroad.

However Article 8(2) makes it clear that this exemption does not apply to the payment of ancillary expenses incurred in Indonesia, such as port fees, airport handling charges, transportation costs, etc., related to the import/export of goods. This issue had earlier been the subject of heated arguments between the Ministry of Communications and port operators.

As regards the “international financing” exemption, Article 9 provides that either the provider or recipient of the financing must be domiciled in Indonesia.

Meanwhile, Article 5 provides additional exemptions on top of those provided in the Currency Law, namely:

- (i). forex commercial operations conducted by a bank in accordance with the conventional and shariah banking legislation.
- (ii). The Article’s Elucidation lists forex-denominated loans for ‘export and other purposes’, forex interbank money transactions, forex-denominated bonds, forex-denominated sub-debt, the purchase of securities using foreign currency, and other banking transactions conducted in accordance with the conventional and shariah banking legislation. This last element is not explained, but obviously leaves the way open for the list to be expanded by BI in line with developments in the banking sector.
- (iii). transactions involving forex-denominated Indonesian government securities on the primary and secondary markets; and
- (iv). other forex transactions that are conducted in accordance with law (including the BI Law, Capital Markets law and Indonesia Trade Finance Agency Law).

While it permits Indonesian banks to extend forex-denominated loans to Indonesia-domiciled borrowers for export purposes, the Regulation is not very clear in confirming whether they can do the same in respect of loans for other purposes. Hopefully BI will address this issue in the circular.

Under Article 14, money changers are exempted from the Regulation, as is the carrying of cash into and out of Indonesia (subject to a limit of Rp 100 million (or forex equivalent) under the Anti Money-Laundering Act of 2010, and BI and Ministry of Finance regulations).

4. Prohibition on Refusal of Payment In Rupiah

Article 23 of the Currency Law prohibits the rejection of Rupiah for payment or settlement purposes within the territory of the Republic of Indonesia, except if: (i) there are doubts as to the genuineness of the proffered currency, or (ii) the use of forex has been previously agreed upon in writing for payment or settlement of an obligation (see below). These provisions are also incorporated in the Regulation.

Exemption (ii) above if interpreted literally would render the requirement to Use Rupiah meaningless. Article 10(3) of the Regulation address this issue by specifying that the “written agreement” exemption is only available in the case of:

- (a). an exempted transaction (as described in Paragraph 3 above); and
- (b). strategic infrastructure projects, where the approval of BI for an exemption has been secured.

The Regulation provides that agreements of FC non-cash payment / settlement arrangements entered into prior to 1 July 2015 shall remain valid until discharge of the contract. However, such exemption does not apply to any extensions of or amended agreements.

The Regulation (Art. 16) also gives BI leeway to grant exemptions to businesses with specific characteristics, having regard to their preparedness to use Rupiah, business continuity, and investment and economic exigencies.

To further boost the use of the Rupiah, the prices of goods and services may only be stated in the national currency (Art. 11).

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The Regulation authorizes BI to seek reports, clarifications and data in connection with the mandatory use of Rupiah and the requirement to list the prices of goods in services in Rupiah, and to conduct monitoring in respect of these requirements.

BI is also authorized to enlist the assistance of the law enforcement authorities in the case of violations (Art. 16).

5. Sanctions

The Regulation contains strict penal and administrative sanctions for non-compliance. On the penal side, breaches of the obligation to use Rupiah and to accept Rupiah in payment are punishable with imprisonment of up to one year and a fine of not more than Rp 200 million. As for a failure to use the Rupiah in non-cash transactions, the Regulation imposes administrative sanctions in the form of a fine of up to Rp 1 billion and a ban on participating in the forex payment system. Rather less draconian, a failure to list prices in Rupiah will only result in an administrative warning. In all cases, BI may recommend to the authorities that enforcement action be taken, such as the revocation of business licenses or the freezing of business operations.

Conclusion

The Regulation makes it clear that the use of the Rupiah is compulsory in Indonesia for payment and settlement purposes, other than as exempted. Unfortunately, it does not confirm whether it allows the extending of forex-denominated loans by Indonesian banks to Indonesian borrowers. While it is not clear how the Regulation will be enforced in practice, given the current weakness in the Rupiah and overriding concern that the currency be protected, we would advise businesses to err on the side of caution and ensure Rupiah use, save in circumstances where a clear exemption applies.

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- (i). Peraturan BI No. 17/3/PBI/2015 tentang kewajiban Penggunaan Rupiah di Wilayah Negara Kesatuan Republik Indonesia.
 - (ii). Undang-undang No. 7/2011 tentang Mata Uang.
 - (iii). See AHP Client Update: "New Currency Law: Effort to Maintain Confidence in Rupiah."

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