

**THE PUBLICATION OF BANKING REGULATIONS AS GUIDELINES FOR
THE IMPLEMENTATION OF LAW NO. 10 1998**

14 May 1999

I. INTRODUCTION

Measures taken towards the recovery of the national economy require the support of a strong and efficient banking system. The quality of the existing banking system needs to be improved continuously to stimulate and accelerate the recovery of the economy. It is hoped that by the time the economy recovers, there will be strong and highly competitive banking institutions.

Meanwhile, to overcome the impact of the crisis experienced by the wider community, it is necessary to empower and develop to the full the potential of the Indonesian banking sector, including banks servicing those in the low-income category and small and medium enterprises both in the cities and villages. Additionally, to support the creation of an optimal national banking sector, empowerment of banks based on the *Syariah* Principle (Muslim Principle) is required.

To stabilize the measures taken to restore the economy and to overcome the impact of the crisis, foreign funding is required, through the improvement to banking regulations that allow foreign parties access to national banks. Foreign party access can take the form of giving foreign parties the opportunity to own national banks based on a partnership principle between the national and foreign parties or allowing foreign banks to establish branches in Indonesia. As well as this, the door needs to be opened for professional bankers from overseas with high integrity to head foreign-owned banks in Indonesia.

Experience has shown that the banking crisis has been caused partly by the weakness of human resources in the banking sector. To create a strong and efficient banking

institution, support from human resources with high competence and integrity in bank management, is required. Bank Indonesia agrees with the statement that banking sector human resources are a first line of defense in overcoming the crisis. With strong human resources in the banking sector, Indonesian banking institutions will be able to overcome the negative impact of an economic crisis.

With this in mind, as a continuation of Law No. 10 1998, the Government and Bank Indonesia have issued banking regulation which cover:

- a. Commercial Banks and *Syariah* Banks.
- b. Rural Banks (BPR) and *Syariah* Banks.
- c. The Opening of Branch Offices, Subsidiary Branch Offices and Foreign Banks' Representative Offices.
- d. The Purchase of Shares in Commercial Banks, both by Indonesian and Foreign parties.
- e. Mergers, Consolidation, and Bank Acquisitions.
- f. The Revocation of Business Permits, Closure and Liquidation of Banks.

II. MAIN ELEMENTS OF THE REGULATION

1. The Capitalization of Banks

a. Minimum paid up capital for the establishment of various types of banks is as follows:

- ◆ New Commercial Banks - Rp 3 Trillion
- ◆ New Rural Banks (BPR):
 - ◆ For the Jabotabek (Jakarta-Bogor-Tangerang-Bekasi) Area - Rp 2 Billion
 - ◆ For Provincial Capitals - Rp 1 Billion.
 - ◆ In other areas, the total required is Rp 500 million.

b. Funding for the paid up capital has to meet the following requirements:

- ◆ Does not originate from a loan or any form of funding facilities from banks or other parties.

- ◆ Does not originate from illegal activities, either being from or for money laundering. Specific for *Syariah* Banks, the paid up does not originate from sources or funds forbidden by the *Syariah* Principles.

2. Ownership

- a. Ownership of banks can be undertaken through direct investment as well as the purchase of shares at the stock exchange. Indonesian citizens and/or Indonesian legal institutions, as well as a combination of Indonesian citizens and/or Indonesia legal institutions with foreign nationals and/or foreign legal institutions can own national Commercial Banks.
- b. Foreign parties can acquire ownership of a commercial bank through the purchase of shares on the stock exchange to a total of 100% of the recorded shares of the bank. The total of bank shares recorded at the stock exchange is a maximum of 99%. Through direct investment in a commercial bank, foreign parties can own 99% of the total shares of the bank. Thus, national parties will still have a minimal of 1% of the total shares of the bank, without differentiating banks that have and have not yet gone commercial.
- c. Ownership of Rural Banks (BPR) by foreign parties is still not permitted.
- d. Bank owners are obligated to satisfy the conditions listed below:
 - ◆ Are not in the list of bad bankers drawn up by Bank Indonesia.
 - ◆ Have high integrity, good character and high morals, comply with current laws, have a high commitment to the healthy development of banks and are considered fit and proper to become bank shareholders.
 - ◆ Potential owners becoming majority shareholders need to be examined and interviewed by Bank Indonesia.

3. Management

a. The Bank Management consists of Commissioners and Directors. The management composition is as follows:

- ◆ Commercial Banks, at least 3 Directors and at least 2 members of the Board of Commissioners.
- ◆ Commercial Banks with shares owned by foreign parties can place foreign bankers as members of the Board of Directors and Board of Commissioners, given that at least 1 member of the Board of Commissioners and Board of Directors is an Indonesian citizen.
- ◆ BPRs, at least two people on the Board of Directors and at least one member of the Board of Commissioners.

b. Prerequisites for members of the Bank's Management are as follows:

- ◆ Are not in the list of bad bankers drawn up by Bank Indonesia.
- ◆ Have high integrity, that is, good character and morals and law-abiding, have a high commitment to the healthy development of banks and are considered fit and proper to be on the Bank's Management.
- ◆ Have the ability to undertake the management of the bank.
- ◆ The majority of the members of the Board of Directors should have banking operational experience in an executive position for at least 5 years.
- ◆ At least 50% of the directors of BPRs must have operational experience in funding and credit-provision sector of at least 2 years.
- ◆ Members of the Board of Commissioners must have knowledge and/or experience in the banking sector.
- ◆ There should be no family relationship between the majority of the members of the Board of Commissioners and directors, as well as between directors.

- ◆ Members of the Board of Directors are forbidden from having an executive position in another bank, company, or institution.
- ◆ Members of the board are not allowed to own, either individually or as a group, more than 25% of the paid up capital in another company.
- ◆ Potential management has to be examined and interviewed by Bank Indonesia.

4. Scope of work of BPRs

- a. BPRs, which according to the former regulations were forbidden from being established in big cities, are allowed to do so by the new regulations.
- b. The opening of BPR branch offices in the former regulations was limited to within the same regency (kabupaten). In the new regulations the area is extended to the same province as the head office.
- c. BPRs are given the chance to extend their services to other cash activities including payment point, mobile cash, floating cash and cash services outside other offices.

5. Foreign Bank Branches

- a. With the new regulations, the opportunity to establish foreign bank branches has been reopened. However, not all foreign banks can open branch offices, as there are requirements that need to be met.
- b. Foreign banks that are to open Branch Offices in Indonesia are obligated to:
 - ◆ Own total assets, which put them into the category of the 200 largest banks in the world.
 - ◆ Have a good reputation and at least an “A” rating based on the well-known international Moody’s and Standard & Poor’s rating.

- c. Capital requirements for foreign banks' branches equal that for the establishment of national banks, that is Rp 3 Trillion, in the form of rupiah and foreign currency.

6. Banks Based on the *Syariah* Principle

- a. The business activities of commercial banks and BPRs based on the *Syariah* Principle can be carried out through :
 - ◆ The establishment of a new bank.
 - ◆ The conversion of a conventional bank to a bank based on the *Syariah* Principle.
 - ◆ Opening of a syariah branch of a conventional commercial bank.
- b. All banks undertaking business activities based on the *Syariah* Principle are obligated to appoint a *Syariah* Supervisory Board that has the task of ensuring that the product and services of the bank are in line with the *Syariah* Principle based on the *fatwa* (Muslim binding rule) of the National *Syariah* Board.
- c. Conventional banks opening a syariah branch office are obligated to provide working capital put aside from the conventional banking operation:
 - ◆ At least an amount of Rp 2 Billion for each office in the Jabotabek region.
 - ◆ At least an amount of Rp 1 Billion for each office outside the Jabotabek region.
- d. Conventional commercial banks with syariah bank branches are obligated to form a *Syariah* Business Unit at the bank's head office which functions as a head office for syariah branch offices. These syariah business units have the role of regulating and supervising all the activities of the syariah branch, placing and managing funds of the syariah branch office, receiving and administering the financial reports of the syariah branch offices.

- e. The Head of the Syariah Business Unit should be at least one position below the bank's board of directors, have commitment to the operation of the syariah bank, integrity and good morals, and be experienced in the operation of syariah banks.
- f. Banks undertaking activities based on the Syariah Principle are forbidden from:
 - ◆ Performing banking operational activities that are not in line with the syariah principle.
 - ◆ Changing their business permits to the business permits of conventional banks.

Sanctions on violations of this stipulation will be the revocation of the particular bank's business permit.

7. Mergers, Consolidations, and Acquisitions of Banks.

- a. Mergers, Consolidations, and Bank Acquisitions can take place upon:
 - ◆ The initiative of a particular bank owner; or
 - ◆ Request from Bank Indonesia
- b. At the time of the merger, consolidation, acquisition of the bank, the total assets of the combined bank should not exceed 20% of the total assets of all the banks in Indonesia.
- c. The implementation of the merger, consolidation, and bank acquisition should take into account:
 - The interests of banks, creditors, minority shareholders, and bank employees; and
 - The interests of the general community and healthy competition in the banking business.
- d. The implementation of bank mergers, consolidations, and acquisitions has to be with the permission of Bank Indonesia. In providing a permit, Bank Indonesia assesses whether the merger, consolidation, and acquisition of the bank:
 - ◆ Will strengthen the bank performance and the national banking system.

- ◆ Does not create a centralization of economic power in 1 person or group in the form of a monopoly that is unbeneficial for the community.
- ◆ Does not harm the bank's customers.

8. Bank Liquidation

- a. A bank's licence will be revoked if:
 - ◆ A bank experiences difficulties that are detrimental to its survival and where measures taken are not sufficient to overcome the problem the bank is facing.
 - ◆ Based on Bank Indonesia's assessment, the bank's condition can harm the banking system.
 - ◆ There is a request for liquidation from bank owners and shareholders.
- b. After Bank Indonesia has revoked its business permit, further settlements are made by the Liquidation Team to be formed by the General Shareholders' Meeting within a maximum of 60 days. Bank Indonesia will form the Liquidation Team, according to the relevant laws, given that the General Shareholders' Meeting cannot be held.
- c. The Liquidation Team is to consist of 3-7 people, who can be outside parties or a combination of management and outside parties
- d. With the formation of the Liquidation Team, the bank's directors and board of commissioners are forbidden from taking legal steps related to the assets and obligations of the bank.
- e. The Liquidation Team's working period is a total of 5 years.
- f. For the interests of the property of banks in liquidation, the Liquidation Team can request a court's cancellation of the legal actions of the banks that have incurred losses to the bank's property, where these legal actions were undertaken within the year prior to the revocation of the bank's business permit.
- g. The bank's liabilities are paid in the following order :
 - ◆ Employee salaries, court expenses, auction expenses, and tax.

- ◆ Bank customers (time deposits, clearing accounts and savings account customers)
 - ◆ Other parties with claims on the bank.
- h. In cases where liquidation is made at the request of bank owners then Bank Indonesia will revoke the bank's business permit after all of its obligations have been settled.

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