# OJK: Foreign capital in insurance industry complies with the law

*Discussion with the Supervising Deputy Commissioner of the Non-Bank Financial Industry (NBFI) of the Financial Service Authority, Edy Setiadi.*

The Financial Service Authority (OJK) stated that foreign ownership of insurance companies has been regulated in Government Regulations referring to the (insurance) law. Therefore, foreign investment has been carried out in line with *Law No. 40 of 2014, regarding Insurance*. "It has been stipulated in Government Regulations; therefore, such regulations have been enacted following preliminary studies," said Supervising Deputy Commissioner of NBFI I from the OJK to *Republika.co.id*, Tuesday (18/4). In a meeting with the House of Representatives, Monday (17/4), Indonesia's Ministry of Finance, Sri Mulyani, proposed limiting foreign ownership in insurance companies to a maximum of an 80 percent shareholding. Previously, foreign owners could own over 80 percent in insurance companies.

According to Edy, the OJK has called upon insurance companies to follow the rules on foreign ownership. "We have carried out (the rules) immediately after the Law's limitation through supervisory action process," he explained. Meanwhile, the Supervising Deputy Commissioner of NBFI I OJK, Dumoly F. Pardede, stated that the Government Regulation is the governments' domain. Therefore, NBFI FSA will simply follow their decisions. "However, in OJK regulations, we are charged with keeping national interests in mind," Dumoly said. The House of Representatives has yet to approve the Ministry of Finance's proposition. Previously, the House revealed that 19 insurance companies have over 80 percent of their shares owned by foreign entities. In fact, from Rp368.5 trillion assets of the life insurance industry, over 74.37 percent are owned by foreign entities.

Source: http://www.republika.co.id/berita/ekonomi/keuangan/17/04/18/oollwj382-ojk-modal-asing-di-perusahaan-asuransi-sudah-sesuai-aturan/

*(translation by Jonathan Sadikin, S.H.)*

# Update on personal data law for insurance companies

(*by Oka Anantajaya, S.H., LL.M with research by Jonathan Sadikin, S.H.)*

There has been a notable change in data protection laws where the Ministry of Communications and Information ("**MIC**") recently issued Ministry of Communication and Information Regulation No. 20 of 2016 ("**MCIR No. 20/2016**") on Protection of Personal Data in Electronic System. Simultaneously, the Financial Services Authority ("**OJK**") also issued OJK Regulation No. 69/POJK.05/2016 ("**POJK No. 69/2016**") on Implementation of Insurance, Sharia Insurance, Reinsurance and Sharia Insurance Businesses. The new rules introduced by MCIR No. 20/2016 and POJK No. 69/2016 will affect insurance companies, on subjects such as data center requirements, dispute settlement mechanism, confiscation of personal data, government supervision and administrative sanctions. These elements warrant further examination.

**Data center requirements**

One of the highlights of POJK No. 69/2016 on Insurance Companies is that such regulation explicitly requires insurance companies to place their data centers and disaster recovery centers within the territory of Indonesia. The policy reasoning behind this requirement is for the purpose of law enforcement, protection and enforcing Indonesia's sovereignty over its citizens. This requirement is basically a reaffirmation of the data center and disaster recovery center requirements stated in MCIR No. 20/2016, whereby a data center and disaster recovery center of an Electronic System Operator providing public services should be established in the territory of Indonesia.

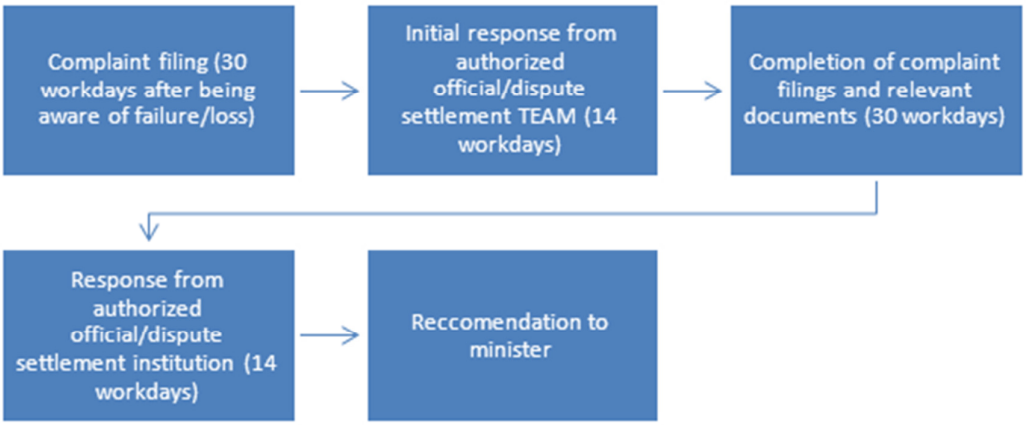
**Dispute settlement mechanism**

MCIR No. 20/2016 offers a new dispute settlement mechanism on personal data-related disputes. Firstly, the regulation offers all personal data owners and electronic system administrator the right to file a complaint with the Minister of Communications and Information for failure to protect the secrecy of personal data. There are two possible reasons for such complaint, namely:

a. The absence of notification for failure to protect personal data
b. Occurrence of a loss due to a failure to protect data, despite proper notification, the notification was too late.

The minister would then have full authority to delegate authority to the relevant Director-General who may in turn form a dispute settlement panel.

The complaint filing and handling process can be summarized as follows: [1]




Please be advised that the authorized official/dispute settlement institution as set out in the regulation is only authorized to provide a recommendation to the minister to impose an administrative sanction on the Electronic System Administrator. However, the institution may make the recommendation, notwithstanding whether or not the complaint can be resolved amicably or through other alternative dispute settlement methods. The mechanism is without prejudice to all parties' right to file a lawsuit under private law.

[1] MCIR No, 20/2016, Art.31

**Confiscation of personal data**
If law enforcement and the justice system require that certain personal information be confiscated, then such confiscation would only be applicable to personal data and not to the entire electronic system. The Electronic System Administrators are by law refrained from changing or removing the said personal data and must maintain the protection of personal data within its electronic system.[2]

**Supervision**
The implementation of this regulation will be supervised by the Minister and/or head of Supervising Agency and the relevant Sector Regulator (which in this case would be OJK), both directly and indirectly. The Minister is authorized to request data and information from electronic system administrators to protect personal data. The request may be done periodically or at any time deemed necessary. Authority shall be delegated to a Director-General.[3]

**Administrative sanctions**
Violation of the regulation may trigger administrative sanction in the form of verbal warnings, written warnings, temporary suspension of activities, and/or announcement on websites. Further rules on the implementation of the administrative sanctions shall be regulated in a ministerial regulation. The authority to impose sanctions resides with the minister, although it may be imposed by the head of a supervisory agency and the relevant sector regulator.[4]

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[2] MCIR No, 20/2016, Art.33

[3] MCIR No, 20/2016, Art.35

[4] MCIR No, 20/2016, Art.36

# Summary of laws and regulations in the geothermal sector

*by MKK's Geothermal Team*

Indonesia's position on the ring of fire gives it a comparative advantage over most countries in the world in the geothermal power sector. In recent times, production has been ramped up and will continue to rise, as the government strives to meet its 35,000MW target. Amendment of PLN's power supply master plan (RUPTL) has increased the target for power supply in the renewable sector. The following is a summary of the key laws in the Indonesian geothermal energy sector.

Law no. 27 of 2003 on Geothermal Energy has since been superseded by Law no. 21 of 2014, but many of its implementing regulations are still in effect. This law was enacted to develop geothermal energy, defining it as equivalent to mining with all the regulatory issues that mining is subject to, such as forestry and environmental matters, the division of the project into phases (exploration, exploitation, production). However, this law afforded geothermal a special status as an independent area of activity since no other form of renewable energy (solar, hydro, biomass, wind, etc.) had a law to regulate its activities.

Law no. 21 of 2014 on Geothermal Energy (the "**New Geothermal Law**") demonstrates the government's commitment to develop geothermal energy, as it seeks to foster exploration activity by separating geothermal energy from mining. Geothermal resources are often located in forest areas, and thus the association with mining was a major obstacle at the outset since this greatly complicated permitting issues, especially land and forestry matters. The interplay with mining activities was an impediment to carrying out exploration activities, which has now been removed by the New Geothermal Law. The categorization of geothermal as a 'type of mining' was perhaps symptomatic of the regulator's initial confusion over geothermal energy: after all, geothermal is somewhat akin to oil and gas exploitation (drilling is involved) and to mining (because the basic phases are similar: exploration, exploitation, production). Subsequent implementing regulations sought to simplify the tender process.

Presidential Regulation Number 30 of 2015 on Third Amendment to Presidential Regulation No.71 of 2012 broadens the definition of "institutions that require land" as formulated by PR No. 71/2012. Since land acquisition is the key in achieving financial close and serves as the 'anchor' of any given project, PR No. 30/2015 confirms other parties' right to acquire land.

Notably, it acknowledges business entities' right to land in agreements with government bodies or government-controlled entities involved in building infrastructure. This regulation is meant to facilitate power projects, provided that the project is in the public's interest. However, to date, this PR has never been tested before the court.

Ministry of Finance Regulation No. 172 of 2016 enables a Geothermal License Holder which is in the exploration phase to obtain a full reduction of Property Tax (PBB) on geothermal exploration areas. Exploration activity was previously taxable despite the fact that exploration could lead to negative results (i.e. no steam or bankable resource could be found). Business entities are required to fulfill certain criteria, including obtaining a Geothermal License as regulated by Law No. 21/2014; by providing a Tax Object Letter of Notification and a letter of recommendation from the ministry. This tax reduction is applicable from 2017 fiscal year and onward.

Ministry of Finance Regulation no. 24 of 2010 re-defines depreciation and amortization in a more beneficial manner for geothermal projects, reduced value-added tax and import tax on machinery and capital goods in the development of power plants, reduces the tax for dividend payable to foreign subject, and compensates losses for five years.

MEMR Regulation No. 10 of 2017 sets the maximum span of power purchase agreements to 30 (thirty) years from the commercial operation date (COD).

MEMR Regulation No. 17 of 2014 revised the ceiling electricity tariffs that bidders can enjoy in a tender. Tariffs are based on the geographical zone where a project will be situated and the project's COD. Escalation is provided for in this regulation with the stipulation that it cannot begin until the COD. However, the rate of escalation and any limits thereon are not set out.

MEMR Regulation No. 12 of 2017 applies to all renewable energy sources. In relation to geothermal projects, the regulation recognizes the grandfathering concept, meaning that previous PPAs that have already been signed will remain unchanged.. There are some general provisions added by this regulation that replace the provisions under MEMR Regulation No. 17/2014.

This regulation adds provisions on business to business mechanisms, pricing method and application of operations on a BOOT basis.

MEMR Regulation number 14 of 2015 stipulates the types of Non-Tax State Revenues for geothermal projects as fixed fees for exploration and operation, production fees, fees for map printing services and fees for data collection from exploration activities.

Government Regulation No. 28/2016 stipulates the mechanism and formula for the production bonus.

MEMR Regulation No. 23 of 2017 was enacted to support the production bonus sharing mechanism. It requires producer to submit a yearly production plan, including plans for a production bonus amounting to 1 percent of the projected gross income for geothermal sales or 0.5 percent of the projected income for electricity sales, based on the exchange rate stipulated in the national budget.

Government Regulation No. 7 of 2017 is derived from Law No. 21 of 2014, setting out the central government's authority to regulate the geothermal sector. The government offers the right to outside parties to develop geothermal sites through two models: (1) public bidding and (2) direct appointment. Bidding consists of a tender, followed by a technical and financial assessment and a final selection process to choose the winner. The law requires that a new Indonesian legal entity be selected to manage the geothermal area, and exploration activity which must be initiated one year from the time the permit is granted.