OJK requests discussion on accelerating policy guarantee bill

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JAKARTA: The Financial Services Authority (OJK) hopes that the discussion on the Policy Guarantee bill will move forward quickly. At present, the draft bill is still being studied at the Ministry of Finance. The regulation will later become the basis for the establishment of a policy guarantee institution or LPP. The Director of Insurance Supervision and BPJS Financial Services Authority (OJK), Ahmad Nasrullah, confirmed the foregoing. "It is still being studied [at the Ministry of Finance], and certainly has not been entered into the legislative calendar this year to be discussed by the DPR," Nasrullah told *Bisnis* on Tuesday (08/14/2018).

He hopes the government will immediately finalize the draft bill so that it can be discussed as soon as possible at Senayan. The regulation is mandated by Law No.40 / 2014, regarding Insurance. Article 53 paragraph 1 states that insurance companies and sharia insurance companies must become participants in the policy guarantee program. The implementation of the policy guarantee program will be regulated by law which must be issued no later than three years from the date the Law on Insurance was promulgated, namely October 17, 2017. Thus, the government and the Parliament have passed the deadline for the establishment of a policy guarantee institution mandated by law. "We really hope that soon [the law will be finalized]. However, this is the responsibility of the government and the DPR. Usually we are involved as resource persons," he said.

Meanwhile, two insurance associations, namely the Indonesian General Insurance Association (AAUI) and the Indonesian Life Insurance Association (AAJI), also claimed there had been no further discussion after the OJK asked for input. "There has been no progress. The last time the discussion included a proposal to the OJK," said AAJI Executive Director Togar Pasaribu. Of the three regulations mandated by the Insurance Law, the government still has to complete two of them, namely the Policy Guarantee Bill and the Government Regulation on joint venture legal entities. Meanwhile, the Ministry of Finance released PP No. 14/2018 concerning Foreign Ownership of Insurance Companies on May 27, 2018. The regulation limits foreign ownership in domestic insurance companies to a maximum of 80 percent.

Source: Bisnis.com

SLIK (*Sistem Layanan Informasi Keuangan)*

(MKK banking team, research by Ferawati Natalita)

SLIK or *Sistem Layanan Informasi Keuangan* is a system established by the OJK (*Otoritas Jasa Keuangan)* for the exchange of information on financing or inter-institutional credit. SLIK has replaced Bank Indonesia's debtor database known as *BI Checking*. In addition to expanding the scope of participants (which also cover non-bank financing institutions, including pawnshops [pegadaian] and banks and financing institutions), now they can freely access accurate information and details of customers who wish to apply for a loan (a debtor). This covers customer data and/or information and includes utility data, such as water and electricity bills.

SLIK will assist in the decision-making process. It also can be used by industry players for risk mitigation, particularly credit risk, so as to help lower the level of risk of non-performing loans. Further, the existence of SLIK is also meant to support the expansion of credit access/financing. However, the system is not online, as was the case with *BI Checking*: creditors must make a formal request to the OJK to access the system.

The benefits of SLIK are as follows:

· For the Creditor:

1. Accelerates the process of credit analysis and decision-making.
2. Decreases the risk of non-performing loans in the future
3. Reduces or minimize dependence of Reporting Entity or lender on conventional collateral
4. Assesses the creditworthiness of the prospective borrower
5. Allows operational cost efficiency
6. Encourages transparency of credit management

- What's more, there also benefits for society at large, which are:

1. banking credit data, such as debtor principal data, credit limit, debit balance, credit quality, interest expense, payment installment as well as penalties or loan penalties, become transparent;
2. information is provided on the status of collateral as well as the details of the credit guarantor;
3. new customers, especially those classified as Micro, Small and Medium Enterprises (MSMEs), will gain wider access to creditors who will rely on their financial reputation rather than strictly relying on collateral;
4. the time required to obtain credit approval will be shortened;
5. credit recipients will be encouraged to maintain a good credit standing.

Suspension of an employee under Indonesian law

(MKK labor team)

Suspension of an employee occurs when an employee is asked to leave his place of employment but still remains on the payroll while termination is being processed. The employee in question would continue to receive normal pay during the suspension period and must respect confidentiality requirements. Another reason for an employee to be suspended is in a case where an employee has been disciplined and is sent home pending termination.

This practice occurs for various reasons, but let us consider a case where the employee is a foreigner on a one-year work contract and is terminated, transferred or needs to leave the company before the end of his work permit. How will it play out according to the Indonesian labor law? The Labor Law (Law no. 13 of 2003) stipulates the concept of suspension in Article 155. The Labor Law provides that an employer is allowed to suspend an employee who is in the process of termination until approval from the Industrial Relations Court is issued. During this suspension period, the employer is still obliged to pay his salary and other benefits as regularly received by the employee. In light of the above, a company may suspend an employee, but the termination process will not have any impact on his work permit and his family's residence permit.

According to the law, a foreign worker is classified as a definite period employee due to the fact that the working period should be based on the validity of the employee's work permit. Under the Labor Law, for definite period employment, any party that terminates a definite period employment agreement before its expiry is obligated to pay to the employee compensation in an amount equal to the employee's salary up until the time the definite period employment agreement expires.

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Non-compete clauses in employment contracts

(MKK labor team)

A Non-Compete Clause is a clause in an employment contract stipulating that an employee is not allowed to work in another company in the same industry or which is engaged in the same line of business for a specified period or period after the date of termination of employment.

The Indonesian Labor Law (Law no. 13 of 2003) does not contain any express stipulations on non-compete clauses in employment contracts. Nevertheless, there are various sources of law that speak to this issue:

1. The 1945 Constitution, Article 27(2) "Every citizen shall have the right to work and make a decent living for Humanity";
2. Article 31 of the Labor Law states: "Every worker has the same right and opportunity to choose, obtain, or transfer jobs and earn a decent income within or outside the country";
3. Human Rights Law No. 39 of 1999, Article 38: 1) Every citizen, in accordance with his or her talents, abilities, and abilities, shall be entitled to decent work. (2) Everyone shall have the right to freely choose his/her preferred occupation and shall also be entitled to fair employment conditions";

4. Article 23 of the Universal Declaration of Human Rights: "Everyone has the right to work, to have a free choice of employment, to enjoy favorable conditions of work and protection against unemployment."; Article 6 of the International Covenant on Economic, Social and Cultural Rights: "Parties to the present Covenant recognize the right to work, which includes the right to the opportunity to gain a living by work which he freely chooses or accepts, and appropriate steps can be taken to safeguard this right."

Given the foregoing sources of law, the conclusion that we draw is that great care must be given not to draft non-compete clauses that are too restrictive. A non-compete clause must be drafted which is reasonable in nature and which does not infringe upon a person's right to seek gainful employment.

If it is trade secrets that are the object of a non-compete clause, reference can then be made in an employment contract to the Law on Trade Secrets, which prohibits employees from misusing or misappropriating confidential company secrets.

Analysis

Care must be taken in drafting non-compete clauses to ensure that they are not too restrictive in nature. If a company tries to enforce them, it may run afoul of the regulator which will act to protect employee rights. The Trade Secrets Law can be relied upon to deter misuse of company information and to protect the company from unfair practices by ex-employees.

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