

March 31, 2020

Recently, WHO (the World Health Organization) declared COVID-19 a pandemic in WHO's Director-General's opening remarks at the media briefing on COVID-19 on March 11, 2020. The COVID-19 outbreak is not just a public health crisis, it is a crisis that will touch every sector – so every sector and every individual must be involved in the fight.¹ As per 26 March 2020, the number of COVID-19 cases in Indonesia has jumped to 893 with over 100 new positive cases daily, with the death toll rising to 78.²

In anticipation of the spread of COVID-19 in Indonesia, the Indonesian National Agency for Disaster Management (*Kepala Badan Nasional Penanggulangan Bencana / "BNPB"*) stipulated that the state of emergency due to the outbreak of COVID-19 in Indonesia is for 91 days as from 29 February 2020 until 29 May 2020.³

The COVID-19 outbreak has inevitably affected many sectors in Indonesia, especially the tourism sector. New policies and regulations have been issued by the GOI as an effort to deal with the spread of COVID-19 on the one hand and to relax business requirements (especially for those businesses which have been adversely impacted by the COVID-19 outbreak) on the other hand.

A. Manpower Sector

The Ministry of Manpower of the Republic of Indonesia has issued a circular letter⁴ which stipulates, among others:

1. an instruction to company managements to forestall the spread of COVID-19 to workers/labor by taking preventative measures such as a hygienic and healthy way of life integrated into the Occupational Health and Safety (*Keselamatan dan Kesehatan Kerja / K3*) program, empowering the Committee for Fostering Occupational Health and Safety (*Panitia Pembina Keselamatan dan Kesehatan Kerja*) and optimizing the function of occupational health services;
2. encouragement for company managements to immediately make preparatory plans to face the COVID-19 pandemic with the aim of minimizing the risk of transmission at work and maintaining business continuity;
3. the implementation of wage protection for worker/labor related to the COVID-19 pandemic:
 - a. full wages must be paid to workers/labor who are categorized as Persons Being Monitored (*Orang Dalam Pemantauan*) for COVID-19 based on a doctor's statement and therefore unable to come in to work for a maximum of 14 (fourteen) days or the standard period set by the Ministry of Health of the Republic of Indonesia;
 - b. full wages must be paid to workers/labor who are categorized as COVID-19 suspected cases and are quarantined/isolated based on a doctor's statement, during the quarantine/isolation period;
 - c. wages must be paid to workers/labor who do not come to work due to illness as a result of COVID-19 as proven by a doctor's statement in accordance with the laws and regulations;
 - d. if a company limits its business activities due to government policies in its area for COVID-19 prevention and control, and this causes some or all of its workers/labor not to come to work then, taking into account business sustainability, any changes in the amount or method of payment of workers' wages must be carried out in

accordance with the agreement between the employer and workers/labor.

Point (d) above allows an employer and worker/labor to come to a mutual agreement on any changes in the amount and method of payment of employer's wages if the COVID-19 outbreaks cause some or all of a company's workers/labor not to come to work, taking into account the business sustainability of the employer.

MoM CL 3/2020 does not put companies which apply a work from home system in a specific category. Although those companies could fall into the category in point (d), those companies may have a better situation as they can still generate revenue from work performed at home. However, we are of the view that, although some employees' work can be carried out from home, the output may not be as much as in normal conditions, and so companies applying this system may eventually see their revenues reduced. If this does happen, they too can negotiate changes in the amount and method of payment of workers' wages with the workers/labor.

In addition to the above, the Labor Law⁵ provides that if a worker is absent due to illness (as in point c above), an employer must pay the worker's salary up to 12 months calculated as follows⁶ :

- for the first 4 months of illness, the employer must pay 100% of the worker's wages;
- for the second 4 months of illness, the employer must pay 75% of the worker's wages;
- for the third 4 months of illness, the employer must pay 50% of the worker's wages; and
- for the subsequent months of illness, employer must pay 25% (twenty-five percent) of the of the amount of the worker's wages prior to the termination of employment by the employer.

Please note that the employer is allowed to terminate the employment of a worker who gets infected by COVID-19 if the worker is absent from work due to the illness as evidenced by written statement from a doctor for a period longer than 12 consecutive months.

B. Banking Sector

The development of the spread of COVID-19 has had a global direct or indirect impact on the performance and capacity of debtors to meet credit or financing payment obligations. The impact on debtor's performance and capacity will increase credit risk, which has the potential to disrupt banking performance and financial system stability, which in turn can affect economic growth.

To encourage the optimization of banking performance, especially the intermediary function, and also to maintain financial system stability and support economic growth, economic stimulus policies need to be adopted by GOI as a countercyclical impact of the spread of COVID-19. For this purpose, the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan / "OJK"*) has issued a regulation⁷ which allows banks to implement policies to stimulate economic growth with regard to debtors, affected by the spread of COVID-19, including the micro, small and medium enterprise debtors. According to the elucidation of POJK 11/2020, the debtors covered are those who are having difficulty in meeting their obligations to a bank due to the debtor or the debtor's business being affected by the spread of COVID-19 directly or indirectly in such economic sectors as: (i) tourism; (ii) transportation; (iii) hospitality; (iv) trade; (v) processing; (vi) agriculture; and (vii) mining.

The policies to stimulate economic growth referred to above include:

1. Asset Quality Determination Policy

Determination of asset quality of:

- a. credit at conventional commercial banks (*Bank Umum Konvensional*" **BUK**");
- b. financing at Islamic Commercial Banks (*Bank Umum Syariah*" **BUS**") or Islamic Business Units (*Usaha Unit Syariah*" **UUS**");
- c. provision of other funds at BUK, BUS and UUS;
- d. credit at Rural Banks (*Bank Perkreditan Rakyat*" **BPR**"); and/or
- e. financing at Sharia Rural Banks (*Bank Pembiayaan Rakyat Syariah*" **BPRS**"),

for such debtors with a maximum amount of ten billion Rupiah must be based on the determination of the principal payment and/or interest/margin/profit sharing/*ujrah*. This maximum amount applies to either 1 debtor or 1 (one) project/business.

2. Credit or Financing Restructuring Policy

Restructured credit or financing is categorized as performing as from when it was restructured. Credit or financing eligible for restructuring is credit or financing provided before or after the debtor, including debtors in micro, small, and medium enterprises, is affected by the spread of COVID-19. In addition to this, the restructured credit or financing for BPR is exempted from the application of the normal accounting treatment for credit or financing restructuring.

The credit or financial restructuring referred to above applies to credit or financing given to debtors mentioned above as affected by the spread of COVID-19 where the credit or financial restructuring takes place after the debtor is affected by the spread of COVID-19.

Please note that in implementing the above-mentioned policies, banks must: (a) take into consideration the implementation of risk management as regulated in the OJK regulation on the implementation of risk management for banks and (b) have guidelines to determine which debtors are eligible for the treatment in the above-mentioned policies. Such guidelines must, at least, contain the criteria for debtors and sectors that are affected by the impact of COVID-19.

In addition to the above, banks may also provide credit or financing and/or the provision of other new funds to eligible debtors. The determination of the quality of credit or financing and/or the provision of other new funds must be done separately from the quality of those granted previously with the following terms and conditions:

- credit or financing and/or provision of other new funds with a maximum amount of Rp10,000,000,000 (ten billion Rupiah) is subject to the provision in point 1 (*Asset Quality Determination Policy*) above; or
- credit or financing and/or provision of other new funds with a ceiling of more than Rp10,000,000,000 (ten billion Rupiah) must be in accordance with the provisions of OJK regulations concerning asset quality assessment.

As mentioned above, the implementation of countercyclical policies to the impact of the spread of COVID-19 is aimed at encouraging banking performance, in particular in banks' intermediary function, maintaining financial system stability and supporting economic growth by providing treatment specifically for bank loans or financing up to a certain amount and the restructuring of credit or financing. However, to date, no policies and/or regulations have been issued by the GOI pertaining to the incentives regarding the interest charged by banks. The GOI is currently preparing a policy on the incentives with regard to the interest on People's Business Credit (*Kredit Usaha Rakyat*) to ease the burden on Micro, Small and Medium Enterprises as a stimulus due to the impact of the COVID-19 pandemic.⁸

C. Capital Market Sector

The GOI's declaration of a state of emergency disaster caused by the outbreak of COVID-19 up until 29 May 2020

could affect the ability of capital market industry players to hold a General Meeting of Shareholders (“**GMS**”), and prepare and submit financial report and annual reports in a timely manner. In response to this, OJK has issued an OJK letter⁹ which gives deadlines for the submission of the following reports:

1. annual financial reports and annual reports for Issuers and Public Companies;
2. reports on the results of the Audit Committee’s evaluation of the implementation of audit services on information of annual historical finances of Issuers and Public Companies; and
3. annual financial reports for the Stock Exchange, Clearing and Securities Institutions, Depository and Settlement Institutions, Securities Companies, Investor Protection Fund Providers, Securities Price Appraisal Agency, Indonesian Securities Funding Agency, Securities Administration Bureau, Mutual Funds, Collective Investment Agreement Real Estate Investment Funds, Collective Investment Agreement Asset-Backed Securities, Asset-Backed Securities in the form of Participation Letters, Collective Investment Agreement Infrastructure Investment Funds, and Securities Rating Companies,

are extended for 2 months from the deadline for reporting obligations referred to in the regulations in the capital market sector.

The following provisions apply to the holding of **GMS** by public companies:

1. the deadline for a public company to hold an **GMS** is extended for 2 months as from the previously applicable deadline for holding such **GMS**;
2. a public company’s **GMS** can be convened by granting a power of attorney electronically using the electronic **GMS** (“**E-GMS**”) system provided by the Depository and Settlement Institution (*Lembaga Penyimpanan dan Penyelesaian* / “**LPP**”) and the **GMS** must be held as efficiently as possible without prejudice to the validity of the **GMS** under previous legislation;
3. **LPP** will establish conditions for the holding **GMS** using the **E-GMS** system.

D. Fiscal Incentives

On 13 March 2020, the GOI through the Ministry of Finance (“**MoF**”) announced that the GOI will provide fiscal stimulus volume 2 to mitigate the negative impact of the COVID-19 on Indonesia’s economy. One such stimulus is providing a relaxation of Article 21, Article 22, Article 25 Income Tax (Pph) and accelerated Value Added Tax (“**VAT**”) refunds.¹⁰ The new incentives provide several benefits for taxpayers in certain industries. The MoF explained that the focus of the fiscal stimulus volume 2 is the manufacturing sector which has been disrupted due to companies being hindered in obtaining imported raw materials and to allow exporters to respond more quickly.

Fiscal incentives are given in various forms, namely:

1. Relaxation of Article 21 Income Tax

Article 21 Income Tax will be borne 100% (one hundred percent) by the GOI for workers’ income of up to Rp200,000,000 (two hundred million Rupiah) in the manufacturing sector.

2. Relaxation of Article 22 Income Tax

The taxpayers in 19 manufacturing industries, both manufacturing industries in the Ease of Imports for Export Purposes (*Kemudahan Impor Tujuan Ekspor* “**KITE**”) areas and non-**KITE** areas will be exempted from Article 22 Income Tax on imports of goods.

3. Relaxation of Article 25 Income Tax

The relaxation of Article 25 Income Tax is a reduction of corporate tax by 30% (thirty percent) for 19 (nineteen)

manufacturing sectors, located in KITE and non-KITE areas, including KITE for Small and Medium Enterprises (“KITE-IKM”).

4. VAT refunds

The GOI has accelerated VAT refunds even without an initial audit. However, if there is something that needs to be reviewed, it will be further examined.

The foregoing incentives will be provided by the GOI for a period of 6 (six) months from April 2020 – September 2020. However, up to date, no policies and/or regulations have been issued by the GOI that further regulates these fiscal incentives.

Furthermore, as the COVID-19 outbreak is having an adverse impact on the work or business activities of taxpayers, including their fulfilment of their tax obligations, the Directorate General of Taxation has issued a Decree¹¹ which stipulates, among others:

1. Determination of the condition due to the COVID-19 outbreaks from 14 March 2020 until 30 April 2020 as a *force majeure* event;
2. Taxpayers who fulfill their tax obligations in this period will be exempted from the normally applicable tax administration sanctions. These administrative sanctions refer to the administrative sanctions for delays in:
 - a. submission of individual income tax returns (*Surat Pemberitahuan Tahunan (“SPT”) Pajak Penghasilan Tahunan*) for the tax year 2019; and
 - b. payment of the amount of underpaid tax in annual income tax returns of tax year 2019;
provided the SPT are submitted and the underpaid tax is paid no later than 30 April 2020;
3. The normally applicable administrative sanction for point (2) (a) above is fines while the normally applicable administrative sanctions for point (2) (b) above is the charging of interest.
4. Individual taxpayers as referred to in point (2) above are:
 - a. individual taxpayers who keep books up to the end of the financial year on 31 December 2019;
 - b. individual taxpayers who are required to make records, namely: (i) individual taxpayers who carry out business activities or freelance work in accordance with the provisions of tax legislation are allowed to calculate net income using the net income calculation norms or (ii) individual taxpayers who do not carry out business activities or freelance work or (iii) individual taxpayers who are subject to final income tax, including those from businesses with a certain gross turnover.
5. Taxpayers having the obligation to submit reports related to the participation in tax amnesty in the form of a report on the realization of the transfer and investment of additional assets and/or reports on the placement of additional assets, can submit the report no later than 30 April 2020;
6. Taxpayers who submit income tax returns (withholding tax returns) on withholding/collection for the February 2020 tax period from 21 March 2020 to 30 April 2020 will be exempted from administrative sanctions for the late submission of the Income Tax Return period;
7. The administrative sanctions referred to in point (6) above are fines;
8. The obligation for payment of due and payable income tax returns on withholding/collection referred to in point (6) above must still be fulfilled at maturity in accordance with the Minister of Finance’s regulation regulating the procedure for payment and tax payment; and
9. Taxpayers who submit applications for legal remedies in the form of: (a) objection, (b) reduction or elimination of second administrative sanctions or (c) reduction or cancellation of the tax assessment letter or the second tax collection letter, whose deadline for filing the application ends between 15 March 2020 and 30 April 2020, is given an extension of the deadline for filing the application until 31 May 2020.

The issuance of new policies and regulations is expected to have a positive impact on business actors who are

adversely impacted by the outbreak of COVID-19. However, there are other issues caused due to the outbreak of COVID-19 that the GOI should also consider adopting: (a) tax incentives to all sectors (not only the manufacturing sector, but also especially heavily affected industries such as tourism, (b) deferred payment of bank loan principal and interest for a minimum 6 (six) months, (c) incentives from OJK to not apply status calls 1 to 5 if a customer fails to repay the loan principal and/or interest, and (d) incentives on payment of employers' obligations i.e salaries and religious holiday benefits.

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1. Please click here, accessed on 21 March 2020.↩
 2. Please click here, accessed on 26 March 2020.↩
 3. Head of BNPB Decree No. 9.A. of 2020 concerning the Determination of the State of Emergency Disaster in the Outbreak of Corona Virus in Indonesia dated 28 January 2020 and Head of BNPB Decree No. 13A of 2020 concerning Extension of State of Emergency Disaster in the Outbreak of Corona Virus in Indonesia dated 29 February 2020.↩
 4. Circular Letter No. M/3/HK.04/III/2020 concerning Worker/Labor Protection and Business Continuity in the Context of the Prevention and Control of COVID-19 dated 17 March 2020 ("**MoM CL 3/2020**"). ↩
 5. Law No. 13 of 2003 concerning Labor Affairs ("**Labor Law**"). ↩
 6. See Article 93 (3) of the Labor Law.↩
 7. OJK Regulation No. 11/POJK03/2020 concerning National Economy Stimulation as a Countercyclical Policy Impact of the Spread of Coronavirus Disease 2019.↩
 8. Please click here, accessed on 24 March 2020.↩
 9. OJK Letter No. S-92/D.04/2020 dated 18 March 2020 ("**OJK Letter 92/2020**"). ↩

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