ADVISORY

April 2020

MAKARIM & TAIRA S.
COUNSELLORS AT LAW

Makarim & Taira S.
Summitmas I, 16th & 17th Fls.
Jl. Jend. Sudirman Kav. 61-62
Jakarta 12190
Indonesia
P: (62-21) 5080 8300, 252 1272
F: (62-21) 252 2750, 252 2751
www.makarim.com

The Indonesian Government's Effort to Control and Mitigate the Impact of the COVID-19 Pandemic: Regulations and Policies to Stimulate Finance and Tax Sectors and Relaxation for Importing Medical Goods and Supplies

Upon the ongoing spread of coronavirus disease ("**COVID-19**") pandemic, the Indonesian Government has declared the COVID-19 as a national emergency situation. Following the nation's COVID-19 emergency, the Indonesian Government has issued sets of regulations and policies in various sectors in order to control and mitigate the adverse impacts of the COVID-19 pandemic.

In this Advisory, we will discuss several regulations and policies implemented by the Indonesian Government for the purpose of stimulating finance and tax sectors, as well as to control the spread of COVID-19 by providing relaxation for importing medical goods and supplies in Indonesia.

A. Regulations and Policies to Stimulate Finance and Tax Sectors

In an effort to mitigate the adverse economic and financial impacts of the COVID-19 pandemic, the Indonesian Government, among others, issued Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang*) No. 1 of 2020 on State Financial Policy and the Stability of Financial Systems for the Handling of the Corona Virus Disease 2019 (COVID-19) Pandemic and/or In Order to Address Threats that Endanger the National Economy and/or the Stability of Financial Systems ("**PERPPU 1/2020**") on 31 March 2020.

PERPPU 1/2020 Regulation 1/2020 serves as a set of extraordinary measures that can be implemented by the Indonesian Government during the COVID-19 pandemic and which specifically address Indonesia's national economy and financial system.

Some of the highlights of PERPPU 1/2020 are the following:

- **Adjustments of Income Tax for Corporate Taxpayers**

  Under Article 5 (1) of PERPPU 1/2020, the Income Tax for domestic corporate taxpayers have now been adjusted to the following rates: (i) 22% (twenty two percent) for the 2020 and 2021 Tax Years; and (ii) 20% (twenty percent) for the 2022 Tax Year. In addition, publicly-listed companies with the total number of shares being traded on the stock exchange in Indonesia at least 40% (forty percent) and meet certain requirements will be eligible for an additional 3% (three percent) cut.

- **Tax Treatments Related to Electronic-Based Trading Activity ("E-Commerce")**

a) Value-Added Tax ("**VAT**")

Under Article 6 (1) of PERPPU 1/2020, the Indonesian Government will charge VAT on the Taxable Intangible Goods and Services from Outside of Customs Areas Within Customs Areas through E-commerce – which will be collected, deposited and reported by foreign traders (including foreign individuals), foreign service providers, and foreign/domestic E-Commerce organizers ("**Foreign E-Commerce Parties**") appointed by the Minister of Finance ("**MOF**").

b) Income Tax

Income Tax will be imposed upon the Foreign E-Commerce Parties that have a significant economic presence. Those with a significant economic presence will be treated as permanent establishments and therefore are subject to Income Tax. The significant economic presence will be determined based on the gross circulation of business group consolidation which reach a certain amount, sales value and active users in Indonesia.

c) Electronic Transaction Tax

If the determination of Foreign E-Commerce Parties as a permanent establishment cannot be conducted due to the implementation of agreements with other countries on the avoidance of double taxation (tax treaty) and the prevention of tax evasion, an electronic transaction tax will be imposed upon the Foreign E-Commerce Parties which meets the significant economic presence requirement.

- **Budget Deficit Relaxation**

PERPPU No. 1/2020 allows the budget deficit to widen beyond the previous legal limit of 3% (three percent) of the Gross Domestic Product (GDP). The budget deficit limit will gradually be lowered to 3% (three percent) by 2023.

- **The Authorities of Bank Indonesia ("BI") in Handling Financial System Stability Issues**

According to Article 16 (1) of PERPPU 1/2020, the following are, among others, the new authorities of BI in handling financial system stability issues:

a. to granting short-term liquidity loans or short-term liquidity financing according to sharia principles to systemic and non-systemic banks;

b. to grant Special Liquidity Loans to systemic banks which are experiencing a liquidity crisis and which are not eligible for short-term liquidity loans or short-term liquidity financing according to sharia principles;

c. to purchase long-term Government Bonds/Sharia Bonds in the primary market, including any Government Bonds/Sharia Bonds which are issued for the specific purpose of mitigating the effects of the COVID-19 pandemic;

d. to purchase/repurchase (repo) any securities which are owned by the Loan Guarantee Agency (*Lembaga Penjamin Simpanan* - "**LPS**") in order to cover the costs of handling any bank solvency issues; and

e. to provide access to funding to companies /private entities through the repurchase of government bonds or state sharia securities owned by the relevant companies/private entities through banks.

- **The Authorities of the LPS in Handling Financial System Stability Issues**

  According to Article 20 (1) b. of PERPPU 1/2020, one of the authorities of LPS in handling financial system stability issues is to engage in the following activities: a) the sale/repurchase of government securities owned by BI, b) the issuance of debt securities, 3) the granting of loans to other parties, and 4) the granting of loans to the Government, if LPS is expected to experience liquidity difficulties in handling failed banks.

- **The Authorities of the Financial Services Authority (*Otoritas Jasa Keuangan* – "OJK") in Handling Financial System Stability Issues**

  a. The authority to issue written orders to financial service institutions to conduct mergers, consolidations, acquisitions, integration, or conversions.

  b. The authority to exempt certain parties from the mandatory application of the transparency principle in the stock-market sector.

  c. The authority to Issue regulations on the utilization of information technology with respect to the organization of General Meetings of Shareholders and other relevant meetings.

- **Crisis protocol**

  Under Article 27 of PERPPU 1/2020, the funds spent by the Government and Financial System Stability Committee's (*Komite Stabilitas Sistem Keuangan* - "**KSSK**") members in order to implement the state budget policies, including the policies on taxation, on state spending, on the regional finance sector, on financial system stability and on the national economic recovery program, are part of the economic cost of saving the economy from the crisis and not regarded as state losses.

  PERPPU 1/2020 also provides KSSK's members and secretary, officials from the Ministry of Finance, BI, the OJK and LPS and other officials related to the implementation of the PERPPU 1/2020 with immunity from criminal charges when issuing policies deemed necessary to safeguard the economy in light of the COVID-19 pandemic, if they are performing their tasks with good intentions and in accordance with the prevailing laws.

In addition to PERPPU 1/2020, the following regulations have been issued as stimulus on the finance and tax sectors in light of the COVID-19 pandemic:

1. **OJK Regulation No. 11/POJK.03/2020 on The National Economic Stimulus as a Countercyclical Policy in Relation to the Impact of the Outbreak of the 2019 Coronavirus Disease**

   In an effort to help debtors comply with their credit or finance payment obligations, the OJK issued Regulation No. 11/POJK.03/2020 on The National Economic Stimulus as a Countercyclical Policy in Relation to the Impact of the Outbreak of the 2019 Coronavirus Disease ("**POJK 11/2020**"). POJK 11/2020 serves as a stimulus to control the loan ratio and ease loan repayments for debtors (including micro, small and medium-scale enterprises – "**MSME**") which are facing difficulty in complying with their obligations to banks because they or their businesses are being affected economically either directly or indirectly by COVID-19, including those in the tourism, transportation, hospitality, trade, processing, agriculture, and mining sectors.

   POJK 11/2020 relaxes the loan quality assessment and restructuring requirements for debtors affected by COVID-19. For the loan quality assessment, banks now only assess the quality of a loan worth up to IDR10 billion (approx. USD591,961, at the current exchange rate of USD1 = IDR16,893) according to a debtor's ability to pay the principal amount or interest or margin/profit share/*ujrah* ("fee" under Sharia law) on time. The loan ceiling is valid for one debtor or project.

   Meanwhile, loans can be restructured in relation to credits or financing obtained both before and after debtors, including MSME debtors, began to suffer the negative impact of the COVID-19 pandemic. However, the loans may only be restructured after the debtors have already been affected by the COVID-19 pandemic. The restructuring period varies depending on the bank's assessment of the debtor with a maximum term of 1 (one) year.

2. **MOF Regulation No. 23/PMK.03/2020 on Tax Incentives for Taxpayers who are Affected by the Outbreak of the Coronavirus Disease**

   Furthermore, the MOF has officially released a tax stimulus package to minimize the impact of the COVID-19 pandemic on taxpayers under MOF Regulation No. 23/PMK.03/2020 on Tax Incentives for Taxpayers who are Affected by the Outbreak of the Coronavirus Disease ("**MOF Reg. 23/2020**"). Under MOF Reg. 23/2020, the Government provides 4 (four) types of tax incentive by:

   a. an exemption from Income Tax under Article 21;

   b. an exemption from Income Tax under Article 22 on import transactions;

   c. a reduction to 30% (thirty percent) in Income Tax instalments under Article 25; and

   d. a paid In-Advance VAT Refund of up to IDR 5 billion (approx. USD 295,980, at the current exchange rate of USD1 = IDR16,893).

   MOF Reg. 23/2020 came into effect on 1 April 2020.

B. Regulations and Policies on the Relaxation for Importing Medical Goods and Supplies

The Indonesian Government through the relevant ministries and government institutions, including the National Disaster Management Agency (*Badan Nasional Penanggulangan Bencana* - "**BNPB**") are collaborating to maintain the availability of medical equipment and personal protective equipment (*Alat Pelindung Diri* - APD), and other goods necessary amid the outbreak of the COVID-19 pandemic.

The Indonesian Government's efforts are aimed to improve the protection for all the health workers who have been treating COVID-19 cases, as well as to control face mask prices that have been skyrocketed as a result of high demand from the communities as panic over the spreading of COVID-19 continues to grow across the country.

Since the end of March 2020, the number of COVID-19 positive cases has risen significantly in Indonesia, with no sign of stopping with more than 100 new cases occur per day.

As a way to overcome the lack of medical supplies and equipment and protective equipment, the Indonesian Government has relaxed importing requirements and now provides certain fiscal and non-fiscal facilities to accelerate import services for other goods. Through this relaxation, the Indonesian Government hopes to accelerate the entry of the medical equipment needed during the COVID-19 pandemic to reduce the shortage and make them readily available.

1. Import Relaxation for Certain Products through Minister of Trade ("MOT") Regulation No. 28 of 2020 on the Eighth Amendment to MOT Regulation No. 87/M-DAG/PER/10/2015 on Provisions on Importing Certain Products

The Ministry of Trade has issued MOT Regulation No. 28 of 2020 on the Eighth Amendment to MOT Regulation No. 87/M-DAG/PER/10/2015 on Provisions on Importing Certain Products ("**MOT Reg. 28/2020**") on 20 March 2020 and came into force on 23 March 2020. The aim of MOT Reg. 28/2020 is to relax the importing requirements and procedures, particularly for importing face masks, medical attire, gloves and various types of medical equipment.

Under MOT Reg. 28/2020, the requirements for importing medical equipment, medical supplies, personal protective equipment and other medical devices have been relaxed for, including among others, the following products and their relevant HS codes:

(1) room air freshener preparations (*preparat*) which do or do not contain disinfectants (HS code No. 3307.49.10);

(2) paper and tissues that have been infused or coated with deodorizers or cosmetics (HS code No. 3307.90.30);

(3) antiseptic products whether they contain soap or not (HS code No. ex.3401.30.00);

(4) Stockings for patients with varicose veins, made from synthetic fibres (HS code No. 6115.10.10);

(5) medical protective clothing (HS code No. ex.6210.10.19);

(6) Clothing used for protection against chemicals or radiation (HS codes No. 6210.20.30, No. 6210.30.30, No. 6210.40.20, No. 6210.50.20, No. 6211.33.30 and No. 6211.39.30);

(7) surgical clothing (HS code No. 6211.43.10);

(8) examination gowns made from synthetic fibres (HS code No. ex.6211.43.90);

(9) surgical masks (HS code No. 6307.90.40);

(10) other masks made from non-woven materials (for non-surgical masks) (HS code No. ex.6307.90.90);

(11) infrared thermometers (HS code No. ex.8543.70.90); and

(12) sanitary towels, sanitary tampons, baby diapers and similar disposable goods made from materials other than textiles, paper or pulp (HS code No. 9619.00.19).

For the above products, the relaxation is in the form of: (i) an exemption from the Surveyor's Report (*Laporan Surveyor* - LS) requirement which should have been obtained in the country of origin or the relevant loading port; and (ii) the non-applicability of the restrictions on the ports of entry.

Instead, the document required to allow shipments of such products is only the Bill of Lading (B/L). The relaxation is granted by the MOT until **30 June 2020**.

Separately, the MOT also banned exporting face masks, hand sanitizers, protective medical gear and raw materials used for health products under MOT Regulation No. 23 of 2020 on The Provisional Ban on Exports of Antiseptics, Mask Raw Materials, Personal Protective Equipment and Masks, in order to ensure a sufficient domestic supply of these products. This ban applies until **30 June 2020**.

2. Facilities for Importing Other Goods to Handle COVID-19 by the BNPB and the Directorate General of Customs and Excise ("DGCE") under Joint Standard Operational Procedure No. 01/ BNPB/2020; No. KEP-113/BC/2020 on the Acceleration of Import Services for Goods for the Purpose of COVID-19 Countermeasures

In addition to MOT Reg. 28/2020 which specifically relaxed imports of certain health, sanitary and medical products, the Indonesian Government also provides several fiscal and non-fiscal facilities for importing any goods used for preventing further spread of and controlling COVID-19, through the issuance of Joint Standard Operational Procedure No. 01/BNPB/2020; No. KEP-113/BC/2020 on the Acceleration of Import Services for Goods for the Purpose of COVID-19 Countermeasures, by the BNPB and the DGCE of the Ministry of Finance ("**Joint SOP**").

In brief, the Indonesian Government now provides 4 (four) types of facilities which includes 3 (three) fiscal facilities and 1 (one) type of non-fiscal facilities to accelerate the services required for importing goods to overcome COVID-19 under the Joint SOP.

The fiscal facilities provided are (i) an exemption from Customs and Excise duties; (ii) the non-applicability of VAT and/or Sales Tax on Luxury Goods (*Pajak Penjualan atas Barang Mewah* or PPnBM); and (iii) an exemption from Income Tax of Article 22 for imports.

Meanwhile, the non-fiscal facilities provided by the Indonesian Government are exemptions from the provisions on imports trading system.

Unfortunately, the Indonesian Government has not issued a list of the types of goods for which these facilities set out under the Joint SOP are granted. Instead, it is determined on case-by-case basis for each importer/recipient (applicant) that submits an application for an exemption from Customs and Excise duties and/or import tax to BNPB. Then, BNPB together with the relevant ministries/institutions will assess the application based on what the applicant wishes to import. Considering the COVID-19 pandemic is a fast-evolving situation, this bureaucracy procedure may in turn, delay the importation of required and important medical supplies.

Those who can apply for the exemptions are divided into the following categories:

(i) Government agencies or Public Service Agencies (*Badan Layanan Umum* – "**BLU**")

These applicants must apply for an exemption recommendation to the BNPB, and the BNPB will issue a recommendation letter for the exemption from the provisions on the import trading system.

Subsequently, the relevant government agencies or BLUs will forward the application to the Regional Office (*Kantor Wilayah*) of Customs and Excise or General Service Office (*Kantor Pelayanan Umum*) of Customs and Excise in the area of the port of entry, which will issue an Exemption MOF Decree (*Surat Keputusan Menteri Keuangan* - SKMK).

The application procedure refers to MOF Regulation No. 171/PMK.04/2019 on Exemptions from Import Duty on Imports of Goods by the Central Government or the Regional Government for the Public Interests ("**MOF Reg. 171/2019**"). According to MOF Reg. 171/2019, an Exemption MOF Decree will be issued at the latest 5 (five) business hours upon receipt of the complete and correct application.

(ii) Non-profit (religious or social) foundations/institutions

These applicants must apply for an exemption recommendation to the BNPB, and the BNPB will issue a recommendation letter for the exemption from the provisions on the import trading system as well as for an exemption from Customs and Excise duties and/or import taxes. Then, the non-profit foundation or institution must forward the application to the Director of Customs Facilities at the Head Office of DGCE, which will issue an Exemption MOF Decree.

The application procedure refers to MOF Regulation No. 70/PMK.04/2012 on Exemptions from Customs and/or Excise Duty on Imports of Consigned Goods as Gifts/Grants for the Purposes of Public Worship, Charity, Social or Cultural Matters ("**MOF Reg. 70/2012**"). MOF Reg. 70/2012 is silent on the timeframe for the issuance of an Exemption MOF Decree. However, given the current situation of the pandemic, we reckon that the timeframe for the issuance of an Exemption MOF Decree may be similar to the one regulated under MOF Reg. 171/2019 (i.e. at the latest 5 (five) business hours upon receipt of the complete and correct application).

(iii) For individuals or private legal entities, the BNPB will first assess whether the goods proposed to be imported will be used for non-profit oriented (non-commercial) or profit oriented (commercial) purposes.

If the purposes are non-profit oriented (non-commercial), the applicant can either submit:

(a) a grant letter (*surat hibah*) to the BNPB (i.e. the Republic of Indonesia) following the application procedure under MOF Reg. 171/2019, so that the applicant can forward the application to the Regional Office of Customs and Excise or General Service Office of Customs and Excise in the port of entry, and an Exemption MOF Decree will be issued;

(b) a grant letter to the relevant non-profit foundation/institution as the grant recipient following the application procedure under MOF Reg. 70/2012, so that the BNPB can issue a recommendation letter for the exemption from the import trading system provisions as well as an exemption from Customs and Excise duties and/or import taxes. Then, the foundation or non-profit organization must also submit an application to the Director of Customs Facilities at the Head Office of DGCE, and an Exemption MOF Decree will be issued.

Meanwhile, if the purposes are determined to be profit oriented (commercial), no fiscal facilities will be granted and Customs and Excise duties, and/or import taxes will still have to be paid and the applicant will still have to apply for an import license to the BNPB during this emergency situation.

Individuals or private legal entities that import goods for non-commercial purposes must also a report to the BNPB on the realization of the importing and distribution of the goods or the distribution of the goods to the public.

(iv) For other parties such as ministries/institutions, universities and international agencies, the BNPB may issue a recommendation letter to grant an exemption from the provisions on the import trading system.

In order to expedite the process, all the above steps (ie the application submission, issuance of the BNPB recommendation, the issuance of the Exemption MOF Decree, and the submission of the PIB) can be completed electronically through Indonesia National Single Window (INSW) online system.

The Joint SOP came into force on 20 March 2020 and will remain in force until the Indonesian Government declares the end of COVID-19 emergency.

* * * * *

Contacts:

Putri Rachelia Azzura - putri.azzura@makarim.com
Anastasia Anggita - anastasia.anggita@makarim.com
Rininta Shafira - rininta.shafira@makarim.com
Yohanes Kevin - yohanes.kevin@makarim.com
Vincent Ariesta Lie - vincent.lie@makarim.com