

BANK INDONESIA SETS OUT NEW E-MONEY REGULATION

On May 4, 2018, the Central Bank of Indonesia (Bank Indonesia - “BI”) finally issued a long-expected regulation regarding electronic money, namely BI Regulation No. 20/6/PBI/2018 on Electronic Money (“BI Reg. 20/2018”). BI Reg. 20/2018 repeals the following BI Regulations:

1. BI Regulation No. 11/12/PBI/2009 dated April 13, 2009 on Electronic Money;
2. BI Regulation No. 16/8/PBI/2014 on the Amendment of BI Regulation No. 11/12/PBI/2009 dated April 8, 2014 on Electronic Money;
3. BI Regulation No. 18/17/PBI/2016 on the Second Amendment of BI Regulation No. 11/12/PBI/2009 dated August 29, 2016 on Electronic Money.

Below are key highlights of this BI Reg. 20/2018.

❖ Definition of E-money

Unlike the previous BI Regulations, BI Reg. 20/2018 defines Electronic Money (“e-money”) as having 3 (three) characteristics instead of 4 (four). An e-money is now defined as a payment instrument which is (i) issued on the basis of the value of money deposited in advance to the issuer, (ii) the value of money is stored electronically in a server or a chip, and (iii) the value of the e-money managed by the issuer shall not be considered as savings as understood under prevailing banking laws. The fourth element which is no longer a characteristic of an e-money under the new regulation is acceptance of multiple merchants (open loop system). We note that the intention of BI Reg. 20/2018 is to regulate closed loop system when it has reached certain threshold.

❖ Closed Loop and Open Loop Systems

BI Reg. 20/2018 now introduces closed loop and open loop systems in greater details. Here are the differences between closed loop and open loop systems, namely:

- i. Closed loop system, whereby e-money may only be used as a payment instrument to goods and/or services providers which are the e-money issuer; and
- ii. Open Loop system, whereby e-money may be used as a payment instrument to goods and/or services providers which are not the e-money issuer.

BI Reg. 20/2018 does not require issuers of closed loop e-money to obtain any license if they have floating funds of less than Rp1,000,000,000 (one billion Rupiah). The previous BI Regulations do not require closed loop e-money to obtain a license from BI.

Please note that open loop e-money system also applies to cases whereby the e-money issuers and goods and/or services providers belong to the same group holding, franchise and online retail networks.

❖ **Front-End and Back-End**

BI is now dividing parties applying for licenses to become part of the e-money framework in two categories, as follows:

- i. Front-end category consists of issuer, acquirer, payment gateway operator, electronic wallet operator and fund transfer operator;
- ii. Back-end category consists of principals, switching operators, clearing operators and final settlement operators.

The main difference between these two categories are the fact that the front-end category concerns parties which directly gets into contact with customers (*customer facing*). Meanwhile, the back-end category concerns parties having no direct contact with customers (*non-customer facing*).

BI Reg. 20/2018 also provides that any entity may own more than one license as long as the licenses are within the same category, for example an entity may hold an issuer license and an acquirer license simultaneously.

❖ **Minimum Capital**

BI Reg. 20/2018 now formally stipulates that non-banks e-money issuers shall fulfill the minimum requirement of paid-up capital of at least Rp3,000,000,000 (three billion Rupiah). While this requirement is not listed in the previous regulations, in practice the minimum capital of at least Rp3,000,000,000 (three billion Rupiah) has been a requirement for quite some time.

Please note that existing non-bank issuers having less than the prescribed capital shall conform with BI Reg. 20/2018 at the latest 6 (six) months after the enactment of this BI Regulation. Moreover, non-bank issuers shall increase the paid-up capital should the floating funds rise as time goes by at the latest in June 2019.

❖ **Foreign Ownership**

Through BI Reg. 20/2018, BI paves a more stringent requirement for foreigners to own shares in e-money issuers. BI Reg. 20/2018 stipulates that at least 51% (fifty one percent) of all shares must be owned by an Indonesian individuals and/or legal entities while the rest of the shares may be owned by foreigners. The calculation of the foreign ownership portion includes direct ownership or indirect ownership, subject to Bank Indonesia's assessment.

In its assessment, Bank Indonesia shall consider, among others, track record of the non-bank institutions as well as the shareholders, technology used in operating e-money and scope of e-money usage. It must also be noted that existing issuers of e-money shall also abide by this provision regarding shares ownership.

❖ **Controlling Shareholders**

BI Reg. 20/2018 defines a controlling shareholder as any party having 25% (twenty five percent) or higher of issued shares with voting rights, or less than 25% (twenty five percent) of issued shares with voting rights and that the relevant shareholder can demonstrate control over the Operator, either directly or indirectly.

BI Reg. 20/2018 also provides that any party may not become controlling shareholders in more than 1 (one) non-bank institutions whereby each of these institutions own the same Payment Services System Operator license. Furthermore, it is also prohibited for any party to become controlling shareholders in more than 1 (one) non-bank institutions in different Payment Services System Operator categories. Meaning a party may only become controlling shareholders in more than 1 (one) non-bank institutions that are within the same Payment Services System Operator category, either the front-end or the back-end category.

Last but not least, pursuant to BI Reg. 20/2018, controlling shareholders, together with members of the Board of Directors and Board of Commissioners from non-bank institutions, may be subject to a fit and proper test conducted by BI.

❖ **Representation and Warranties**

Another highlight of BI Reg. 20/2018 is that it introduces the requirement for banks or non-bank institutions wishing to hold/maintain e-money license to convey to BI in writing a statement of representation and warranties which among others state that the bank or non-bank institution is not in default, is not subject to any sanction from related authorities, and/or is not involved in any criminal or civil case that can materially affect the continuity of the business activities. The submission of the statement of representation and warranties must be supported by a statement from an independent legal consultant based on legal due diligence results.

❖ **Term of E-Money Operator License**

BI Reg. 20/2018 reaffirms that licenses for e-money operators are valid for the period of 5 (five) years and the licenses may be extended at the latest 6 (six) months before the licenses expire.

❖ **Maximum Amount of Money Stored in E-Money**

For unregistered e-money, the maximum amount stored is Rp2,000,000 (two million Rupiah) while registered e-money may hold up to Rp10,000,000 (ten million Rupiah). This means that under the new BI Regulation, the maximum amount stored in unregistered e-money is doubled compared to the provision under BI Circular Letter No. 18/21/DKSP dated September 27, 2016 on the Amendment of BI Circular Letter No. 16/11/DKSP on Electronic Money whereby unregistered e-money amount is capped at Rp1,000,000 (one million Rupiah).

❖ **E-Money Features**

Previously, registered e-money issuers may opt to offer features such as holder registration, top up, transaction payment, bills payment, fund transfer, cash withdrawal, and distribution of government aid to the public. As for the unregistered e-money issuers, there were less features, which included top up, transaction payment and bills payment.

Under the new BI Reg. 20/2018, the features offered are more limited. Issuers of e-money may provide features such as topping-up, shopping transactions as well as bills payment. More features are only available for open loop and registered e-money issuers, i.e. funds transfer and cash withdrawals.

❖ **Transitional Provisions**

There are several transitional provisions that need to be taken into account, among others:

- i. open loop e-money issuers with floating funds of less than Rp1,000,000,000 (one billion Rupiah) or closed loop e-money issuers with floating funds of Rp1,000,000,000 (one billion Rupiah) or more, shall apply for a license to BI no more than 6 (six) months after the enactment of this BI Regulation;
- ii. parties having obtained more than 1 (one) license when BI Reg. 20/2018 comes into effect and are operating in two different categories (front-end and back-end), shall conform to this BI Regulation only if such Parties intend to apply for a new license to BI;
- iii. banks or non-bank institutions that are in the process of obtaining licenses as Operators after the enactment of this BI Regulation shall abide by all licensing requirements as stipulated under the new BI Regulation;

- iv. Operators which have obtained licenses prior to the enactment of this BI Regulation shall submit its representation and warranties letter at the latest 6 (six) months after this BI Regulation comes into effect;
- v. the validity of licenses issued to Operators prior to the entry into force of this BI Regulation shall remain no more than 5 (five) years since the enactment of this BI Regulation;
- vi. the provision regarding the composition of domestic shares ownership shall also be complied with by existing issuers already obtaining licenses prior to the coming into force of this BI Regulation provided that such issuers amended its shares ownership which caused a change in its foreign ownership shares;
- vii. provisions regarding controlling shareholders under this BI Regulation shall be fulfilled by existing controlling shareholders in Operators holding licenses from BI, or parties that are still applying for licenses and subsequently will obtain licenses as Operators from BI, if they change the shares ownership of the Operators.

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