



Client Alert

Financial Services Authority Regulation Number 12 of 2021 on Commercial Banks (“OJK Regulation 12/2021”)

On 30 July 2021, Indonesian Financial Services Authority (Otoritas Jasa Keuangan or “**OJK**”) issued OJK Regulation Number 12 of 2021 on Commercial Banks (“**OJK Regulation 12/2021**”) which will come into force 3 (three) months as of its enactment date (i.e. 30 October 2021).

OJK Regulation 12/2021 regulates various matters applicable to commercial banks, including providing the regulatory framework for digital banking, and categorization of commercial banks according to their core capital (modal inti). While regulation on digital banking provides a long-awaited clarity on the subject, there is some newly introduced (yet practically anticipated) categorizations of banks based on the core capital (modal inti) which currently replaces the previously regulated categorization provided under the revoked OJK Regulation Number 6 of 2016 on Business Activities And Office Network Based On Core Capital of Banks, as amended (“**OJK Regulation 6/2016**”).

This alert highlights the following key principles of OJK Regulation 12/2021: (1) digital banking framework; (2) new categorization of banks based on their capitals; and (3) issues surrounding the new categorization of banks.

Digital Banking

Following the bank digitalization trend in the market, OJK Regulation 12/2021 provides a framework for the validity of digital banks to operate as an independent entity. Under previous iterations, digital banks were not legally acknowledged as separate entities, and instead, considered as services carried out by a bank (in the same existing entity) through technology-based applications – the operation that could be conducted digitally were considerably limited. Under the newly issued OJK Regulation 12/2021, digital bank is defined as a commercial bank carrying out its business activities electronically without a physical office other than a headquarter, or with limited physical office(s). OJK Regulation 12/2021 stipulates that digital banks may operate through:

- a. establishment of a new commercial bank as a digital bank; or
- b. transformation from an existing commercial bank into a digital bank.

While provisions on establishment of a commercial bank also apply to the establishment of a digital bank (commercial bank which will operate as a digital bank), OJK also sets out a specific condition which is currently only applicable to digital bank, where at least 30% (thirty percent) of the minimum capital shall be issued and paid-up at the time of digital commercial bank establishment – principle approval application (*persetujuan prinsip pendirian bank badan hukum indonesia*).

While the long-awaited digital banking framework may come as a relief, the requirement to operate it in a separate entity inevitably raises the question whether it would be more commercially viable (and effectively whether it would also increase operating costs for such separate entity). This would mean that commercial banks which currently provide digital banking services (through one entity) may not jointly operate its regular business activities with the operation of its digital bank services and must either: a) transform itself into a digital bank, or b) establish a separate entity for the digital bank (e.g. by way of spin-off), which means such new entity needs its own separate corporate organs, system, employees and other business operational aspects.

New Categorization on Banks according to the core capital (*Modal Inti*)

Initially, OJK has prescribed the categorization of banks under OJK Regulation 6/2016 into 4 (four) categories (previously referred to as *Bank Umum berdasarkan Kegiatan Usaha* or “**BUKU**”), ranging from BUKU 1 (the smallest category) to BUKU 4 (the largest category) – and such categorization determines the business activities that the bank under each category is allowed to engage in (e.g. foreign-exchange-related activities, treasury-related activities, region/worldwide scope of activities, etc). However, OJK Regulation 12/2021 has replaced the BUKU categorization and provide a new set of categorizations in the form of *Kelompok Bank berdasarkan Modal Inti* (“**KBMI**”) as follow:

- a. **KBMI 1:** banks with core capital amounting to IDR6,000,000,000,000 (six trillion Indonesian Rupiah);
- b. **KBMI 2:** banks with core capital of greater than IDR6,000,000,000,000 (six trillion Indonesian Rupiah) to IDR14,000,000,000,000 (fourteen trillion Indonesian Rupiah);
- c. **KBMI 3:** banks with core capital greater than IDR14,000,000,000,000 (fourteen trillion Indonesian Rupiah) to IDR70,000,000,000,000 (seventy trillion Indonesian Rupiah); and
- d. **KBMI 4:** banks with core capital greater than IDR 70,000,000,000,000 (seventy trillion Indonesian Rupiah).

The abovementioned KBMI categorization based on the core capital applies to commercial banks, foreign bank branch offices (*kantor cabang bank luar negeri* or “**KCBLN**”) and sharia commercial banks as well as sharia units of commercial banks. As to avoid confusion, OJK Regulation 12/2021 also provides the comparison between BUKU classification to KBMI, as follows:

- a. BUKU 1 shall be equivalent to KBMI 1;
- b. BUKU 2 shall be equivalent to KBMI 1;
- c. BUKU 3 shall be equivalent to KBMI 2 or KBMI 3; and
- d. BUKU 4 shall be equivalent to KBMI 3 or KBMI 4.

The new KBMI classification also impacts reporting obligations on liquidity coverage ratio and stable funding ratio, interest rate risk in the banking book and obligation to have a capital conservation buffer.

Potential Issues Surrounding the New KBMI Categorization

OJK Regulation 12/2021 provides comparison between the new KBMI categorization and its BUKU categorization predecessor, provided however, OJK Regulation 12/2021 does not specifically regulate nor provide the framework in connection with the determination of business activities for each type of KBMI classification. Further, as OJK Regulation 12/2021 revokes OJK Regulation 6/2016, there will be an absence of regulation as to the classification for business activities carried out by such banks.

In regards to this, the elucidation of OJK Regulation 12/2021 only stipulates that the stakeholders (e.g. Bank Indonesia, relevant sectoral ministries, etc) who have previously made regulations based on BUKU categorization may make necessary adjustments to the relevant regulations to accommodate the updated bank categorization. The elucidation

may implicate that further impact of the new KBMI categorization, including determination of business activities, is still yet to be regulated by OJK and other relevant stakeholders and may result in the absence of a specific legal basis/underlying.

Others

Other than the abovementioned matters, OJK Regulation 12/2021 also amends some general rules on commercial banks (this includes KCBLN and *Kantor Perwakilan Bank Luar Negeri* (“KPBLN”)), corporate plans, establishment of commercial banks (including increase of paid-up capital to IDR 10 billion - previously IDR 3 billion), ownership and increase/decrease of banks’ capitals, corporate organs, physical offices, change of names and logos, change of business activities and article of association, revocation of licenses, banks synergy, licensing and reporting requirements and other matters.

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