

Summary

On 28 June 2011, the Indonesian Government enacted Law No 7 of 2011 regarding Currency which came into force on the date of its enactment. The most interesting issue in the Currency Law which could cause problems for businesses is the mandatory use of Rupiah for all transactions conducted in Indonesia under Article 21 (1) and the prohibition against refusing to accept Rupiah under Article 23 (1). Exemptions from the mandatory use of Rupiah are provided under Article 21 (2), one of which is "international trade transactions" which is open to a fairly broad interpretation in practice. The Currency Law does not specify what transactions may be classified as "international trade transactions". This may consequently cause uncertainty as to the enforcement of the law. Breaches of Articles 21 (1) and 23 (1) will attract criminal sanctions under Articles 33 and 39. Regardless of the above uncertainty, criminal sanctions have been applicable since the enactment of the Currency Law. An implementing regulation is to be issued by 28 June 2012.

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Indonesia's New Currency Law

Introduction

Indonesia's Currency Law came into effect on 28 June, 2011 as Law No. 7 of 2011 on Currency. The Currency Law is the implementation of Article 23B of the 1945 Constitution which states that the types and value of the currency are to be further regulated under a law.

Whilst many of the provisions of the Currency Law relate to the denominational and physical aspects of Indonesia's currency (both in terms of banknotes and coins), it is the provisions on the mandatory use of Rupiah that will be of most interest and pressing concern to businesses making or charging foreign currency payments in Indonesia. It is primarily this aspect of the Law that is discussed in this Advisory.

Note that the "*Republic of Indonesia*" is defined in the Currency Law as all territories of Indonesia including any Indonesian-flagged ships or planes, Indonesian Embassies and other representative offices of the Republic of Indonesia overseas.

Use of Rupiah currency

Under Article 21 of the Currency Law, Rupiah must be used for any payments or the settlement of obligations or "other financial transactions" in the Republic of Indonesia with exemptions allowed for:

- certain transactions related to the state budget;
- income and grants to and from foreign countries;
- international trade transactions;
- deposits in foreign currency in banks; and
- international financing transactions.

The Currency Law does not specify or elucidate what transactions may be classified as "*international trade transactions*". This issue will be further regulated in the implementing regulation. Pending the promulgation of the implementing regulation, some jurists are of the view that foreign currencies may still be used for commercial transactions involving foreign parties.

Moreover, Article 23(1) of the Currency Law prohibits anyone from refusing to accept Rupiah currency in payment or settlement of any obligation which must, under the Currency Law, be fulfilled using Rupiah and/or for other transactions which take place within Indonesia, unless there is concern about the genuineness of the Rupiah. Article 23(1) does not however apply where payment or settlement of an obligation in foreign currency has been agreed to in writing.

From Article 23, we may conclude that parties may use foreign currencies rather than Rupiah for their transactions provided that the parties have previously agreed to do so in writing. However, the Vice-Head of Commission XI of the House of Representatives in a recent seminar on the Currency Law stated that this exemption only applies to the obligation to accept Rupiah, not

the obligation to use Rupiah. This issue will be further regulated in the implementing regulation.

Until we have a clear clarification to this issue, if a payment in foreign currency has been agreed upon in writing, we believe that the payer will be allowed to pay in foreign currency by virtue of the contractual agreement even though the Currency Law contains no transitional provisions dealing with contracts already in existence on 2 June, 2011.

Sanctions

Under Article 33 of the Currency Law, the penalty for a breach of the provisions of Articles 21(1) and 23(1) (see above) is imprisonment for up to 1 (one) year and a fine of up to IDR 200,000,000. It is further explained that if the sanction is imposed on a company, the maximum fine will be 1/3 greater than that stated in Article 33 and additional sanctions may also be imposed, e.g. revocation of the company's business license and/or the seizure of certain goods owned by the guilty party.

However, since the implementing regulation for the Currency Law has not yet been promulgated, an official of the Indonesian Police Force explained in the seminar referred to above that the Indonesian Police Force will be very cautious to prosecute violators of the obligation in the Currency Law to use Rupiah or the prohibition against refusing to accept Rupiah.

Effectiveness of the Currency Law

With regard to the actual compliance with and enforcement of the Currency Law, it should be noted that implementing regulation(s) for the Currency Law should be issued by no later than 28 June, 2012. In this regard, and as in the case of the recent law relating to the national language, we assume that the implementation and enforcement of the Currency Law may not be fully known or effective before the implementing regulation is issued.

Some jurists argue that a law should be complied with even though implementing regulations have not yet been issued - a case in point here may be the old 1995 Company Law which envisaged an implementing regulation on reserve funds (dana cadangan), a regulation we are still waiting for 16 years and a new Company Law later. On the other hand, however, waiting for the implementing regulations is often viewed as a prudent course of action so as not to commence a course of action which one may later need to reverse or which one may find out was not necessary in the first place..

Our experience has also been that there is often very limited initial general compliance with controversial laws for a number of reasons: first, there is often a lag until the general community gets hold of the law and studies it, let alone understands it; secondly, people tread cautiously immediately after enactment as they are not certain whether the law or regulation will be repealed/revoked or amended/revoked; and, thirdly, it is quite usual for there to be an initial 'socialization' (public awareness) period with greater certainty, agreement, understanding and enforcement only being achieved and being provided by the authorities some considerable time after the law's enactment.

The above paragraph should not be seen as our suggesting that Indonesia's valid and effective laws may be ignored. Indeed, it will be interesting to see if jurisprudence appears where contracts or contractual payment obligations are invalidated or criminal sentences are imposed on businessmen due to non-compliance with the mandatory Rupiah payment provisions.

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