

## **Twelve insurers registered at MoT to cover import/export of commodities**

**KONTAN:** The Ministry of Trade stated that as at February 14, 2019, there are twelve national insurance companies that had obtained approval to offer marine cargo insurance for the export and import of certain goods. Previously, as at February 11, 2019, there were ten insurance companies that had received such approval. The twelve insurance companies are PT Asuransi Sinar Mas, PT Asuransi Adira Dinamika, PT Asuransi Tokio Marine Indonesia, PT Lippo General Insurance Tbk, PT Asuransi Multi Artha Guna Tbk, PT Asuransi MSIG Indonesia, PT Asuransi Wahana Tata, PT AIG Insurance Indonesia, PT Sampo Insurance Indonesia, PT Asuransi Astra Buana, PT Asuransi Central Asia, and PT Asuransi Tugu Pratama Indonesia Tbk.

To obtain approval from the Ministry of Trade, insurance companies must complete several documents, including photocopies of business licenses and of permits to market sea freight insurance from OJK as well as of documents evidencing minimum paid-up capital of Rp100 billion and minimum equity of Rp500 billion, both individually and for the consortium. In addition, insurance companies must also include a certificate that at least contains the address of a branch office or representative in the area of Indonesia or a specific export center. In addition, the company must also include a statement of address of the claims agent in the destination country of export or in a country that has an insurance service business relationship with the export destination country.

The company also needs to make a statement evidencing its ability to build a system that is connected with Intrade. Intrade is an integrated trading service system on the Ministry of Trade website. Another provision is that prospective listed companies are not subject to sanctions limiting business activities by OJK. Before submitting an application to the Ministry of Trade of the Republic of Indonesia, photocopies of these documents must receive a legal sign-off from the OJK.

Previously, the Executive Director of the Indonesian General Insurance Association (AAUI) Dody Achmad Sudiyar Dalimunthe declared that, referring to the audited 2017 financial statements, there were eighteen national insurance companies that had met government requirements. The reason was that eighteen insurance companies already had minimum equity of Rp500 billion. Meanwhile, there are 35 companies that wish to form a consortium to meet the minimum equity because each insurance company has equity below Rp500 billion.

Source: <https://keuangan.kontan.co.id/news/sebanyak-12-perusahaan-asuransi-ekspor-import-telah-terdaftar-di-kemdag>

## **Challenge for insurance companies to cover palm oil and coal exports**

**KONTAN.CO.ID:** The government continues to encourage the growth of Indonesian trade in the service sector. One way is by requiring the export of coal and crude palm oil (CPO) as well as rice imports and procurement of government goods to use domestic insurance. The Executive Director of the Indonesian General Insurance Association (AAUI), Dody Achmad Sudiyar Dalimunthe, stated that this rule would increase insurance premiums, specifically for marine cargo insurance. Even so, he said there were several challenges for general insurance companies to operate in this line of business. First, the condition of the vessels is not ideal, and many are quite old. "Currently, many coal and CPO exports abroad use foreign vessels. Local ships are few in number," he told *Kontan.co.id*.

The second challenge is the possibility of fraudulent claims from parties who wish to take advantage of insurance claims. For example, the party insures goods to be transported from one port to another. The party overstates the value of the insured goods. When an event leads to a claim, the insured can have his claim paid, thereby making a profit. Therefore, according to Dody, to prevent the foregoing, the survey process and underwriting from insurance companies must be optimal. The third challenge is that national insurance must be able to compete with foreign insurance companies, especially in terms of premiums. Currently, coal exports and CPO use the free on board (**FOB**) scheme. Those responsible for shipping the goods are foreign importers.

Most of these importers use foreign insurance services. "To compete, the premium price offered must be the same as that of an overseas insurance company. Unfortunately, we don't know the premium price," said Dody. Notwithstanding the foregoing, he is optimistic that national insurance can engage in the insurance export business for coal and CPO. The reason is that many national insurance companies cover the transportation of coal from the mine to the mother vessels (large capacity transport vessels).

In his view, this segment carries the highest risk. The reason is that the insured goods are raw coal direct from the mine. This coal is then transported using barges and along rivers. "Indonesian insurance should cover those activities which can also handle insurance that is for export because the risk is lower with large [seafaring] vessels," he stated.

**Source:** <https://keuangan.kontan.co.id/news/tantangan-asuransi-umum-untuk-garap-asuransi-ekspor-batubara-dan-cpo>

## **New regulation on domestic marine cargo insurance**

*(MKK maritime team)*

Ministry of Trade Regulation 82/2017, regarding Provision on Utilization of Sea Transportation and National Insurance for Export and Import of Certain Goods, as amended, (“**MR 82/2017**”) stipulates that exports of certain commodities must be covered by domestic marine cargo insurance. Indonesian seaborne commodities may no longer be covered by foreign marine cargo insurance. The Director General of Foreign Trade (“**MoT**”) issued regulation 02/DAGLU/PER/1/2019 pertaining to the national insurance companies that wish to insure exports of coal and CPO, among others.

Such insurance companies need to be registered with the director general of foreign trade and report exports according to the prevailing regulations. The guidelines also include having minimum paid-up capital of Rp100 billion and minimum equity of Rp500 billion. The government has suggested that insurance players establish a consortium to compensate for the small number of eligible insurance companies to insure sea-going exports of coal and other commodities. The implementation date of MR 82/2017 is February 1, 2019 and thus at the time of this writing, it is already in effect.

What effect this will have on the sale of Indonesian commodities remains to be seen. Buyers will be expected to use Indonesian insurance. This could add to the cost of doing business in Indonesia for some buyers, but whether it will substantially deter buyers remains to be seen.

## **Concept of *akad* in insurance law**

(Harimurti Adi Nugroho, S.H.)

According to the Indonesian insurance law, an insurance policy is defined as the deed of the insurance agreement or other document that is equivalent to a deed of an insurance agreement as well as other documents that constitute an inseparable part of an insurance agreement. The agreement shall be in writing and include the terms of the agreement between the insurer and the policy holder. *Akad* is defined as a written agreement which contains, among others, the rights and obligations of the parties according to the principles of *sharia*. The similarity that can be seen from the definitions is that an insurance policy and *akad* are agreements made between the contracting parties.

The regulation clearly provides that every insurance product must have (i) a premium or contribution and (ii) an insurance policy. The regulation requires an insurance policy to contain *akad tabarru'* and *akad tijarah*. If an insurance company wishes to issue other types of *akad*, then the use of such *akad* must be based on a *fatwa* (decision) of the National Sharia Board of the Islamic Scholars Council. Approval from the OJK is required as well.

*Akad tabarru'* used in a sharia insurance policy referred to in the above paragraph must contain at least the following:

- a. agreement of policy holders or participants to help each other (ta'awuni);
- b. the rights and obligations of each policy holder or individual participant;
- c. rights and obligations of policyholders or participants collectively in groups;
- d. the way and time of payment of contributions;
- e. method and time of payment of compensation/claim;
- f. the provisions regarding whether or not a contribution may be withdrawn by the policy holder or participant in the event of a cancellation by the policy holder or participant;
- g. provisions regarding alternatives and percentage of distribution of underwriting surpluses; and
- h. other agreed terms.

## Termination of a director

(Miranda Mamahit, S.H.)

Should a director of a company receive severance pay upon termination? According to Law no. 40 of 2009, (the “**Company Law**”), employees and directors have a different status. The director is deemed to be an owner/operator of the company and not working for the company. However, there is a term which is similar to that of Director, “**Entrepreneur**”. Pursuant to Article 1 paragraph (4) of the Manpower Law, an Entrepreneur is defined as:

- legal entity or person who runs an enterprise;
- legal entity or person that runs an enterprise; or
- legal entity or person representing an enterprise that is domiciled outside the territory of Indonesia.

We can conclude that a director cannot be considered to be an employee since, based on his duties and responsibilities set out in the Company Law, he fills the role of an Entrepreneur, which is an **Employer**, as set out in the definition of “Entrepreneur”.

If the director is a foreigner he will require a stay permit because, in his role as director, he is expected to handle the day to day operations of the company and thus is expected to reside in Indonesia.

The severance pay calculation for a director who has been dismissed shall be based on the company’s sole discretions and policies. According to the Company Law, the Board of Directors position is decided at the General Meeting of Shareholders (**GMS**) as provided in Article 96 paragraph (1) of the Company Law, which stipulates that the amount of salary and benefits, including severance pay for the Directors, is determined based on the GMS. In some cases, the GMS may delegate this matter to the Board of Commissioners which will make a decision thereon at a meeting.

Hence, the regulation and amount of severance pay and benefits provided to the Board of Directors may vary according to the company's Articles of Association, the provisions determined by the GMS, and the results of the Board of Commissioners meeting. In the event the working relationship between the Board of Directors and shareholders is determined by a working agreement that has been agreed by both parties, the severance regulation for the dismissed Board of Directors may be found in Article 164 paragraph (3) under Law No. 13 of 2003 on the Indonesian Manpower Law.