



FINANCIAL SERVICES AUTHORITY
REPUBLIC OF INDONESIA

FINANCIAL SERVICES AUTHORITY REGULATION
NUMBER 38/POJK.04/2014
CONCERNING
CAPITAL INCREASES WITHOUT PRE-EMPTIVE RIGHTS FOR PUBLIC
COMPANIES

BY THE GRACE OF GOD ALMIGHTY

BOARD OF COMMISSIONERS OF THE FINANCIAL SERVICES AUTHORITY,

Considering : that in the order to improve the quality of public information disclosure and to increase supervision upon the implementation of capital increases without pre-emptive rights, it is deemed necessary to finalize the regulation on capital increases without pre-emptive rights by the enactment of Financial Services Authority Regulation concerning Capital Increases Without Pre-Emptive Rights for Public Companies;

In view of : 1. Law Number 8 Year 1995 concerning Capital Market (State Gazette of the Republic of Indonesia Year 1995 Number 64, Supplement to the State Gazette of the Republic of Indonesia Number 3608);
2. Law Number 21 Year 2011 concerning Financial Services Authority (State Gazette of the Republic of Indonesia Year 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253);

HAS DECIDED:

To enact : FINANCIAL SERVICES AUTHORITY REGULATION
CONCERNING CAPITAL INCREASES WITHOUT PRE-EMPTIVE
RIGHTS FOR PUBLIC COMPANIES.

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Financial Services Authority Regulation, what is meant by:

1. Public Companies are Issuers that have conducted Public Offering of Equity Securities or Public Company.
2. Pre-emptive Rights hereinafter referred as PER is right attached on share that gives possibility to the existing shareholders to buy shares and/or other Equity Securities either that can be converted into shares or provide rights to purchase shares, before being offered to other parties.
3. The implementation of Capital Increases is the date of capital deposit transaction or the date of debt conversion in order to capital increases without PER.
4. General Meeting of Shareholder hereinafter referred as GMS is the section of the Public Companies which have authority not given to Board of Directors or Board of Commissioners as regulated in the Law concerning Limited Company and/or article of association.
5. Public Companies Shares Ownership Program hereinafter referred as Shares Ownership Program is an offering program to employees, member of Board of Directors, and/or member of Board Commissioners of Public Companies and/or Controlled Company that qualified to own shares from Public Companies.

CHAPTER II
REQUIREMENTS OF CAPITAL INCREASES WITHOUT PREEMPTIVE RIGHTS

Article 2

- (1) Public Companies can increase its capital without giving PER to shareholders as regulated in Capital Market regulation on which governs Pre-emptive Rights, either to improve financial position or other reasons besides to

improve financial position of the Public Companies.

- (2) Capital increases without giving PER as referred to paragraph (1) must first be approved GMS.
- (3) GMS as referred to paragraph (2) must be conducted in accordance with provisions as stipulated in the Financial Services Authority Regulation concerning the Planning and Implementing on GMS of Public Companies and article of association of Public Companies.

Article 3

In order to improve financial condition, Capital increases of Public Companies without giving PER can be conducted as fullfil the following conditions:

- a. Public Companies are bank that has received a loan from Bank Indonesia or other government institutions in the amount of over 100% (one hundred percent) of the paid in capital or another condition that may result in the restructuring of the bank by the Government institution;
- b. Public Companies other than banks that have negative net working capital and have obligations greater than 80% (eighty percentage) of such the company's assets at GMS that approve the capital increases without giving PER; or
- c. Public Companies is in default or is unable to avoid default on its obligations to a non-affiliated lender and if such lender agrees to accept shares or convertible bonds of Public Companies in settlement of the loan.

Article 4

- (1) Besides to improve financial position, capital increases without giving PER as reffered to Article 2 clause (1) can only be conducted at the most 10% (ten percent) of the paid in capital as mentioned on amendment of Article of Association that has been notified and received by the authorized minister on the announcement date of GMS, with the following conditions:
 - a. Capital increases without giving PER other than

shares ownership program are conducted within 2 (two) years since the GMS regarding Capital increases without giving PER;

- b. Capital increases without giving PER in the event that Shares Ownership Program are conducted within 5 (five) years since the GMS that approving capital increases without giving PER in the event of Shares Ownership Program as referred.
- (2) If at the time of Public Companies conduct capital increase without giving PER as referred to clause (1) letter a, and there are still implementation of the capital increases without right issues in the framework of Shares Ownership Program as referred to clause (1) letter b unfinished time period, capital increases without giving PER as referred to clause (1) letter a can only be conducted at most 10% (ten percent) of the paid-up capital at the of the announcement of the GMS regarding the capital increases without giving PER, and reduced the number of capital increases of Public Companies without giving PER to the Share Ownership Program that has not been implemented.
 - (3) If at the time of Public Companies conduct capital increases without giving PER in the event of Shares Ownership Program as referred to clause (1) letter b, there has still capital increase implementation of Public Companies without giving PER as referred to clause (1) letter a unfinished time period, capital increases without giving PER in the framework of Shares ownership Program as referred to clause (1) letter b can only be conducted at most 10% (ten percent) of the paid-up capital at the time of the announcement of GMS regarding the capital increases without giving PER in the framework of Shares ownership Program, and reduced the number of capital increases of Public Companies without giving PER as referred to clause (1) letter a that has not been implemented.

Article 5

- (1) Payment of share in other forms of money can only be conducted on capital increases without giving PER for the purposes as referred to Article 4 clause (1).
- (2) Payment of share in other forms of money as referred to clause (1) must fulfill the following conditions:
 - a. Directly related to Public Companies need; and
 - b. Using an Appraisal to determine a fair value of other forms of money that is to be used as a payment and fairness of payment transactions of shares in other forms of money.

CHAPTER III

DISCLOSURE INFORMATION

Article 6

- (1) Public Companies that increase their capital without giving PER to shareholders as referred to Article 2 clause (1) must announce the information regarding capital increase without giving PER to shareholders together with announcement of GMS in order to fulfill Disclosure Principal which at least contains:
 - a. reasons and purposes of capital increases without giving PER;
 - b. forecast of implementation period (if any);
 - c. plan on the usage of funds of capital increase without giving PER (if it has been determined);
 - d. Analysis and management's discussion regarding a company financial condition before and after capital increases without giving PER;
 - e. risks or impacts of capital increases without giving PER to shareholder including delusion;
 - f. A table contains information about detailed capital share structure before and after capital increases without giving PER which at least contain:
 1. Authorized capital, issued capital, and paid incapital along with information regarding

- amount of shares, nominal value, and total nominal value;
2. details of shares ownership by shareholders that owned 5% (five percent) or more, director, and commissioner which cover information on names, total shares ownership, total nominal value, and shares ownership percentage; and
 3. unissued authorized shares, which include information regarding total of shares and nominal value; and
 4. Capital share proforma if shares are converted (if any); and
- g. Information regarding prospective investor (if any) includes whether or not has affiliated relationship with the Public Companies.
- (2) In the event that capital increases of Public Companies without giving PER are used to repayment of debt and/or convertible bond of Public Companies, other than requirements on disclosure information as referred to clause (1), Public Companies must disclose additional information on the announcement such as:
 - a. Debt history to be repaid; and
 - b. The usages of funds on debts to be repaid and/or converted.
 - (3) In the event that investor who conducts capital increases without giving PER is an affiliated party, other than disclosure information requirement as referred to clause (1), Public Companies must disclose additional information such as:
 - a. characteristic of Affiliated Party relationship; and
 - b. explanation, consideration, and reasons for performing capital increase without giving PER which is an Affiliated Party compared to unaffiliated party.
 - (4) In the event that capital increases without giving PER resulted changes of controller as mentioned in Financial Service Authority Regulation concerning Takeover of Public Companies by a new controller who is individual,

beside requirements on disclosure information as referred to clause (1), Public Companies must disclose additional information in the announcement regarding the new prospective controller such as:

- a. Name;
 - b. address;
 - c. citizenship;
 - d. beneficial owner (if any); and
 - e. affiliated relationship with Public Companies (if any).
- (5) In the event that capital increases without giving PER resulted changes of controller as mentioned in Financial Service Authority Regulation concerning Takeover of Public Companies by the new controller other than individuals, beside requirements on disclosure information as referred to clause (1), Public Companies must disclose additional information in the announcement regarding the new prospective controller such as:
- a. institution name;
 - b. domicile or head office address;
 - c. business area;
 - d. legal form of party;
 - e. management structure and/or supervisors;
 - f. capital structure;
 - g. beneficial owner; and
 - h. Affiliated relationship with the Public Companies (if any).

Article 7

In the event that capital increases without giving PER is conducted in order to improve financial position of Public Companies as referred to Article 3, beside requirements on disclosure information as referred to Article 6, Public Companies must disclose additional information in the announcement such as:

- a. information regarding creditors who approve and will participate in debt restructuring of Public Companies;

- b. requirements and conditions of debt restructuring;
- c. shares prices on capital increases implementation; and
- d. explanation on accounts that caused financial position of Public Companies had experienced conditions as referred to Article 3.

Article 8

- (1) Announcement as referred to Article 6 and Article 7 must be conducted at least through:
 - a. 1 (one) Indonesian newspaper that has national wide circulation or stock exchange website; and
 - b. Public Companies website.
- (2) Evidence of announcement as referred to clause (1) letter a must be submitted to Financial Services Authority at the latest 2 (two) working day after the announcement.

Article 9

- (1) Information as referred to Article 6 and Article 7 along with supporting documents must be submitted by the Public Companies to Financial Services Authority in form of printed documents and electronic copy from the supporting documents together with GMS announcement.
- (2) Information along with supporting documents as referred to clause (1) must be available for shareholders since the announcement of GMS until the implementation of GMS.

Article 10

- (1) Public Companies shall announce to shareholder and submit to Financial Services Authority on the amendment and/or additional information as referred to Article 6 and Article 7 at the latest 2 (two) working day before the GMS.
- (2) Announcement as referred to clause (1) must be conducted at least through:
 - a. 1 (one) Indonesian newspaper that has national wide circulation or stock exchange website; and
 - b. Public Companies website.
- (3) Evidence of announcement as referred to clause (2) letter

a must be submitted to Financial Services Authority at the latest 2 (two) working day after the announcement.

CHAPTER IV
IMPLEMENTATION OF CAPITAL INCREASES WITHOUT GIVING PREEMPTIVE
RIGHTS FOR PUBLIC COMPANIES

Article 11

Shares prices on capital increases implementation for Public Companies which are not listed and traded on the Stock Exchange, therefore the lowest prices of shares is equal to the fair price set by the Appraiser.

Article 12

The period of time between the cut of date issued by the Appraiser on payment of shares in a form other than money as referred to Article 5 and shares price on capital increases implementation for Public Companies which are not listed and traded on the Stock Exchange as referred to Article 11 and capital increases implementation no later than 6 (six) months.

Article 13

Capital Increases without giving PER that are implemented through Public Offering must comply with Capital Market Regulations regarding Initial Public Offering.

CHAPTER V
ANNOUNCEMENT AND INFORMATION OF CAPITAL INCREASES
IMPLEMENTATION

Article 14

- (1) Public Companies shall publicly announce and notify to Financial Services Authority regarding capital increases implementation no later than 5 (five) working day before capital increases implementation.
- (2) Announcement as referred to clause (1) can be conducted at least through:

- a. 1 (one) Indonesian newspaper that has national wide circulation or stock exchange website; and
 - b. Public Companies website.
- (3) Evidence of announcement as referred to clause (2) letter a must be submitted to Financial Services Authority at the latest 2 (two) working day after the announcement.

Article 15

- (1) Public Companies shall publicly announce and notify to Financial Services Authority regarding capital increases implementation result, which at least contains information:
- a. parties who conduct payment;
 - b. total number and price of shares that been issued; and
 - c. fund usage plan,
- at the latest 2 (two) working day after capital increases implementation.
- (2) Announcement as referred to clause (1) can be conducted at least through:
- a. 1 (one) Indonesian newspaper that has national wide circulation or stock exchange website; and
 - b. Public Companies website.
- (3) Evidence of announcement as referred to clause (2) letter a must be submitted to Financial Services Authority at the latest 2 (two) working day after the announcement.

CHAPTER VI OTHER PROVISIONS

Article 16

In the event that capital increases without giving PER is an Affiliated Party transaction, Public Companies are excluded to comply provisions as stipulated in Capital Market Regulations regarding Affiliated Party Transaction and Conflict of Interest on a Certain Transaction.

Article 17

In the event that capital increases without giving PER is a transaction that contain conflict of interest, Public Companies in addition to fulfill the requirements in this Rule, a Public Companies must also fulfill the requirements as stipulated in Capital Market Regulations regarding Affiliated Party Transaction and Conflict of Interest on a Certain Transaction.

Article 18

Further provisions on the implementation of this Financial Services Authority Regulation are regulated in Circular letter of the Financial Services Authority.

CHAPTER VII
SANCTIONS PROVISIONS

Article 19

- (1) Not with standing to criminal provisions in Capital Market, Financial Services Authority may impose administrative sanction on any party that violates this Financial Services Authority Regulation, as well as on any party that causes the violations to occur, in the form of:
 - a. Written Admonition;
 - b. Fine which is an obligation to pay a certain amount of money;
 - c. Restriction of business activities;
 - d. Suspension the business activities;
 - e. Revocation of business license;
 - f. Cancellation of approval; and
 - g. Cancellation of registration.
- (2) Administrative sanctions as referred to in clause (1) letter b, letter c, letter d, letter e, letter f, or letter g may be imposed with or without administrative sanctions imposition in the form of written admonition as referred to in clause (1) letter a.
- (3) Administrative sanctions as referred to in clause (1) letter b can be imposed separately or along with the imposition

of sanctions as referred to in clause (1) letter c, letter d, letter e, letter f, or letter g.

Article 20

In addition to administrative sanctions as referred to in Article 19 clause (1), Financial Services Authority may take particular actions towards each party who violates provisions of Financial Services Authority Regulation.

Article 21

Financial Services Authority may announce to the public the imposition of administrative sanctions as referred to Article 19 clause (1) and particular actions taken as referred to Article 20.

CHAPTER VIII TRANSITION PROVISIONS

Article 22

Public Companies that has submitted their GMS agenda concerning capital increases without giving PER to Financial Services Authority before this Financial Services Authority Regulation prevail, will be following Regulation Number IX.D.4, attachment of Bapepam-LK Decision Number: KEP-429/BL/2009 on 9 December 2009 regarding Capital Increases without Pre-Emptive Rights.

CHAPTER IX CLOSING PROVISIONS

Article 23

At the time of the Financial Services Authority Regulation becomes effective, the Decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency Number KEP-429/BL/2009 dated 9 December 2009 concerning Capital Increases without Pre-Emptive Rights, along with Rule Number IX.D.4 as its attachment are hereby revoked and

annulled.

Article 24

This Financial Services Authority Regulation becomes effective since the date of its enactment.

In order to have everyone aware of this FSA Regulation, it will be promulgated in State Gazette of the Republic of Indonesia.

Enacted in Jakarta

On 29 December 2014

CHAIRMAN OF FINANCIAL SERVICES
AUTHORITY

BOARD OF COMMISSIONER

Signed

MULIAMAN D. HADAD

Enacted in Jakarta

On 30 December 2014

MINISTER OF JUSTICE AND HUMAN RIGHTS,
REPUBLIC OF INDONESIA,

Signed

YASONNA H. LAOLY

Duplication is appropriate
with the original
Director of Law I,
Law Department
Signed

Tini Kustini

ELUCIDATION
OF
FINANCIAL SERVICES AUTHORITY REGULATION
NUMBER 38 /POJK.04/2014
CONCERNING
CAPITAL INCREASES WITHOUT PRE-EMPTIVE RIGHTS FOR PUBLIC
COMPANIES

I. GENERAL

Every Public Companies needs financing to do their operational activities. Source of those financing can be obtained through financing whether from internal source or from external company. Internal source of fund can be obtained from operational company outcome. External source of fund can be obtained through debts whether through direct loan or indirect loan such as the issuance of debt securities, as well as through the issuance of equity securities or new shares.

In the event that the financing obtained through the issuance of equity securities or new shares, Public Companies can conduct capital increases through Right Issue and without giving Pre-emptive Rights.

In relations to the capital increases, the objectives of Financial Services Authority Regulation are to regulate things that must be implemented by Public Companies if is going to increases capital without giving Pre-emptive Rights, then it is necessary to amendment Regulation Number IX.D.4, the attactment of decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency Number: KEP-429/BL/2009 dated 9 December 2009 concerning Capital Increases without Pre-Emptive Rights, to increase the quality of disclosure information to public and supervision on the implementation of capital increase without giving Pre-Emptive Rights.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory.

Article 2

Clause (1)

At the time of the Financial Services Authority Regulation becomes effective, Capital Market Regulation that regulates Right Issues is Rule Number IX.D.1, the attachment of decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency Number: KEP-26/PM/2003 dated 17 July 2003 concerning Right Issue.

Clause (2)

Self-explanatory.

Clause (3)

Self-explanatory.

Article 3

Self-explanatory.

Article 4

Clause (1)

What is meant by “Minister” is a minister whose duties and responsibilities are in justice and human rights area.

Clause (2)

Self-explanatory.

Clause (3)

Self-explanatory.

Article 5

Self-explanatory.

Article 6

Clause (1)

Self-explanatory.

Clause (2)

Self-explanatory.

Clause (3)

Self-explanatory.

Clause (4)

Self-explanatory.

Clause (5)

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

Self-explanatory.

Letter e

Self-explanatory.

Letter f

Self-explanatory.

Letter g

In practice, “beneficial owner (Pemilik manfaat)” more common as beneficial owner.

Letter h

Self-explanatory.

Article 7

Self-explanatory

Article 8

Self-explanatory

Article 9

Clause (1)

What is meant by “supporting documents” among others evidences that support the conditions of negative capital work or condition of unable to fulfill financial obligation on the due date.

Clause (2)

Self-explanatory

Article 10

Self-explanatory

Article 11

Self-explanatory

Article 12

What is meant by “tanggai penilaian” that are more common as cut off date is a date of value, assessment result, or stated calculation of economy benefit.

Article 13

Self-explanatory

Article 14

Self-explanatory

Article 15

Self-explanatory

Article 16

At the time of the Financial Services Authority Regulation becomes effective, Capital Market Regulation that regulates Affiliated Party transaction is Rule Number IX.E.1, the attachment of decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency Number: KEP-412/BL/2009 dated 25 November 2009 concerning Affiliated Party Transaction and Conflict of Interest of Particular Transaction.

Article 17

At the time of the Financial Services Authority Regulation becomes effective, Capital Market Regulation that regulates Affiliated Party transaction is Rule Number IX.E.1, the attachment of decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency Number: KEP-412/BL/2009 dated 25 November 2009 concerning Affiliated Party Transaction and Conflict of Interest of Particular Transaction.

Article 18

Self-explanatory

Article 19

Self-explanatory

Article 20

What is meant by “particular actions” among others:

- a. Suspension on giving the effective statement, for instance effective statement on merging, acquisition; and
- b. Suspension of Financial Services Authority statement that there are no further responses on documents that submitted to

Financial Services Authority in the event that capital increases
with Right Issues.

Article 21

Self-explanatory

Article 22

Self-explanatory

Article 23

Self-explanatory

Article 24

Self-explanatory

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA
NUMBER 5652