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NEWSLETTER Issue 15 JANUARY 2015

Provisions for the Export and Import of Petroleum, Natural Gas, and Other Fuels

by Athalia Devina

Petroleum, natural gas, and other fuels are renewable and non-renewable strategic natural resources and also vital commodities that dominate the lives of many people and play an important role in the national economy and social welfare. Their national management must therefore be able to provide prosperity and welfare for all Indonesians. In order to sustain the availability of petroleum, natural gas, and other fuels, their export and import must be regulated. To this end, the Minister of Trade ("**MoT**") has enacted Minister Regulation No. 03/M-DAG/PER/1/2015 entitled The Provision of Exports and Imports of Petroleum, Natural Gas, and Other Fuels ("**Minister Regulation No. 03/M-DAG/PER/1/2015**").

Petroleum, natural gas, and other fuels can only be exported and imported based on the conditions of supply and demand in the country.[1] This will be taken into consideration by the Minister of Energy and Mineral Resources in issuing recommendations on the type and amount of petroleum, natural gas, and other fuels that can be exported and imported.

Petroleum and natural gas can only be exported by (i) a business entity that engages in upstream petroleum and natural gas activity, (ii) a permanent establishment that engages in petroleum and natural gas activity, and (iii) a business entity that engages in downstream petroleum and natural gas activity. The business entity and the permanent establishment must obtain a permit as a Registered Exporter of Petroleum and Natural Gas ("**ET Petroleum and Natural Gas**"), issued by the MoT. Other fuels can only be exported by a business entity that undertakes business activity relating to other fuels. The business entity must obtain a permit as Registered Exporter of Other Fuels ("**ET Other Fuels**"), issued by the MoT. The holder of ET Petroleum and Natural Gas who is to export petroleum and natural gas must obtain an Approved Exporter of Petroleum and Natural Gas permit, issued by the MoT. The holder of ET Other Fuels who is to export other fuels must obtain an Approved Exporter of Other Fuels permit, issued by the MoT.

Petroleum and natural gas can only be imported by (i) a business entity that undertakes the activity of downstream

petroleum and natural gas and (ii) an end user. The business entity and the end user must obtain a Registered Importer of Petroleum and Natural Gas permit ("**IT Petroleum and Natural Gas**"), issued by the MoT. Other fuels can only be imported by (i) a business entity that undertakes activity relating to other fuels and (ii) an end user. The business entity and the end user must obtain a Registered Importer of Other Fuels permit ("**IT Other Fuels**"), issued by the MoT. The holder of IT Petroleum and Natural Gas who is to import petroleum and natural gas must obtain an Approved Importer of Petroleum and Natural Gas permit ("**AI Petroleum and Natural Gas**") , issued by the MoT. The holder of IT Other Fuels who is to import other fuels must obtain an Approved Importer of Other Fuels permit ("**AI Other Fuels**"), issued by the MoT. AI Petroleum and Natural Gas and AI Other Fuels will be valid in accordance with the applicable period at the recommendation of the Director General of Oil and Gas, or the Director General of New Energy, Renewable and Energy Conservation.

Petroleum, natural gas, and other fuels that are to be exported and imported must be verified or technically tracked at the port of loading. The verification and technical tracking should be done by surveyors that have been appointed by the MoT. The verification and technical tracking of exports and imports by surveyors does not impede the authority of the Directorate General of Customs and Excise to conduct customs inspections.

[1] Petroleum, natural gas, and other fuels that listed under this category can be found in http://jdih.kemendag.go.id/id/news/2015/01/14/ketentuan-ekspor-impor-minyak-bumi-gas-bumi-dan-bahan-bakar-lain

The Inclusion of Small and Medium Scale Industry as Registered Exporters of Forestry Industry Products

by Vinton Rasil Taris

To support the current forestry products industry in Indonesia, it is important to have sustainable and legally verified raw material. The Indonesian Minister of Trade has issued Regulation No. 97/M-DAG/PER/12/2014 (the "**Reg No. 97/2014**") regarding Forestry Industry Product Exports. The issuance of Reg No. 97/2014 supersedes Regulation No. 64/M-DAG/PER/10/2012 as amended by Regulation No. 81/M-DAG/PER/12/2013 regarding the Forestry Industry Product Exports Provision. In order to increase exports, create a well-regulated administration system, and ease the business of exporting verified forestry products, Reg No. 97/2014 sets outs several rules for the inclusion of small and medium scale industry as one of the categories of registered exporters of forestry industry products and their online administration system.

Reg No. 97/2014 stipulates that small and medium scale forestry industry is included in the category of registered exporters of forestry industry products. Based on point 5, article 1, Reg No. 97/2014, small and medium forestry registered industries (Industry Kecil Menengah or hereinafter called "**IKM**") are industries which have Industrial Registration and Industry Licenses that have received recognition as registered exporters but have yet to obtain a Timber Legality Certificate with an investment value up to IDR 10 billion. A registered IKM can only export limited forestry products subject to article 18, paragraph 1, Reg No. 97/2014 with a Declaration of Export document (substituted for the V-Legal Document) which warrants that the exported products have been verified. The Declaration of Export document is only valid for one export at a time.

The Minister of Trade has also established an online administration system ("**Inatrade**") to ease the business of applying for licenses or other authorization, and is accessed through http://inatrade.kemendag.go.id. Based on the Reg 97/2014 several administration processes, as listed below must be undertaken through the Inatrade system:

a. Registered Exporter License and Registered Non-Producing Exporter License application;
b. Letter of Export approval;
c. V-Legal document report;
d. Declaration of Export document report;
e. Annual export planning, realization and production report; and
f. Registered Exporter License and Registered Non-Producing Exporter re-activation License.

The newly issued Reg No. 97/2014 is a result of collaboration between the Ministry of Trade, the Ministry of Environment and Forestry, and the Ministry of Industry. "Through the synergy of these Ministries, we expect an increase in exports of products from the forestry industry such as furniture and handicrafts," asserted Trade Minister Rachmat Gobel at a press conference held at the Ministry of Trade Office Building on Monday (29/12).[1] There are several differences between the new and the previous regulation regarding Forestry Industry Product Exports, primarily the inclusion of IKM as a registered exporter and the integrated online administration system. The aim of the Reg No. 97/2014 is to create a better administration system to support forestry industry production.

[1] http://www.kemendag.go.id/files/pdf/2015/01/02/tiga-menteri-bersatu-dukung-peningkatan-ekspor-mebel-dan-kerajinan-en0-1420164589.pdf

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Guidelines for the Licensing and Regulation of Representatives of Foreign Construction Services

by Rio Rahmat Hidayat

On September 22, 2014, the government issued Ministry of Public Works Regulation No. 10/PRT/M/2014 concerning Guidelines for Permit Requirements of Representatives of Foreign Enterprise Construction Services ("**Permen 10/PRT/M/2014**"). This revokes the previous regulation issued in 2011. The purpose of this regulation is to better protect national construction services in the presence of foreign construction services legal entities ("**BUJKA**").

According to Permen 10/PRT/M/2014, the BUJKA is required to obtain a License for the Representatives of Foreign Construction Legal Entities ("**Izin Perwakilan Badan Usaha Jasa Konstruksi Asing/Izin Perwakilan**"), valid for 3 (three) years, to provide construction service activities in Indonesia. Izin Perwakilan can be extended if (i) the applicant submits the application not more than 60 (sixty) calendar days after expiry; (ii) the applicant must provide at least 1 (one) construction service within a period of 3 (three) years; (iii) it must deliver annual business reports; and (iv) it must have an extended recommendation from a technical team evaluator.

The BUJKA as defined in article 1, number 3 of Permen 10/PRT/M/2014 is a foreign entity that is established by law and domiciled in a foreign country, has a representative office in Indonesia and is equal to a limited company engaged in the business of construction services. Furthermore, to obtain Izin Perwakilan, the BUJKA must file an application letter along with attachments to Unit Kerja (structural unit in the Ministry of Public Works that has duties and functions related to the licensing of foreign construction business services) on behalf of the Minister of Public Works.

The type of services provided by Unit Kerja in accordance with licensing requirements are (i) new license issuance for the representatives of foreign Construction Legal Entities; (ii) license extension for the representatives of foreign Construction Legal Entities; (iii) the change of representatives of foreign Construction Legal Entities data; (iv) the deregistration of representatives of foreign Construction Legal Entities. Applicants are obliged to pay an administration fee in the amount of USD 5,000.- for business as a consultant services planner or construction supervision, and USD 10,000.- for the construction services sector in order to obtain a new license, extend a license and/or for a change of business form.

The BUJKA is only allowed to conduct construction work activities that are valued to at least Rp100,000,000,000.- and/or Rp10,000,000,000.- for planning or supervision of activities that are high risk in their implementation, require a lot of expertise, and use a special method and/or specialized equipment for their implementation.

The BUJKA is obliged to form a joint operation during procurement, implementation and termination of the construction services process in every project with a domestic construction services company (BUJK) that has already obtained a construction service business license (IUJK) and SBU (certificate of classification and qualification recognition of business capability in the construction services sector). Pursuant to article 14 paragraph 2, the BUJKA has the following obligations:

1. to comply with all regulation in Indonesia;
2. to deliver annual business reports;
3. the transfer of knowledge to BUJK workers;
4. to appoint an Indonesian worker as "a support employee" for each foreign worker at technical and management level.

Sanctions:

Administration sanctions shall be imposed on any BUJKA that violates this regulation in the form of a written warning, freezing of the license, or revocation of the license.

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Circular Letter of the Financial Services Authority on Standard Contracts

by Febi Jaya Conggih

In relation to Financial Services Authority Regulation No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector ("**POJK No. 1/2013**"), the Financial Services Authority ("**OJK**") has issued Circular Letter No. 13/SEOJK.07/2014 on Standard Contracts ("**SEOJK No. 13/2014**"). SEOJK No. 13/2014 contains general implementation guidelines for businesses in the financial services sector ("**PUJK**") for the adjustment of clauses in standard contracts, as provided in Articles 21 and 22 POJK 1/2013. SEOJK No. 13/2014 was effective from 20 August 2014.

In entering into a standard contract with the consumer, the PUJK must fulfill the principles of balance, fairness, and equity. No clause in the standard contract may contain exoneration or abuse of position clauses. An exoneration clause is a clause that increases the rights and/or reduces obligations of the PUJK or reduces the rights and/or increases consumer obligations. Abuse of position is a condition in a standard contract that enables one party to exploit certain situations for their own advantage, for example, taking advantage of consumers in the case of emergencies, either intentionally or unintentionally, and where the PUJK does not explain the benefits, costs and risks of the products and/or services offered to the consumer.

SEOJK No. 13/2014 imposes the following restrictions on standard contracts, whereby contracts may not:

a) transfer of responsibilities or obligations from the PUJK to the consumer;
b) give the right to the PUJK to refuse refunds in respect of money paid by consumers for products and/or services purchased;
c) oblige the consumer of the PUJK, either directly or indirectly, to carry out any unilateral action relating to the goods pledged by the consumer, unless such unilateral action is enforceable by legislation;
d) require the consumer to prove that the loss of benefits of products and/or services purchased by the consumer is the PUJK's responsibility;
e) give the right to the PUJK to reduce the benefits of the products and/or services or reduce the assets of the consumer who becomes the object of such products and services agreements;
f) state that the consumer is subject to new regulations, additional, advanced and/or changes made unilaterally by the PUJK during the period of utilization of the products and/or services purchased; and/or
g) state that the consumer authorizes the imposition by the PUJK of encumbrances, liens or security interest on the products and/or services purchased by consumers in instalments.

SEOJK No. 13/2014 includes not only standard contracts agreed in printed form, but also all standard contracts entered into in digital or electronic form, or e-contracts offered by the PUJK through electronic media. SEOJK No. 13/2014 also requires that each PUJK must obtain the written consent of the consumer by way of, among others things, a signature on the standard contract or other documents that are integral to the standard contract devised by the PUJK, as well as giving consumers enough time to read and understand the standard contract before signing, or before the standard contract agreed between the PUJK and the consumer becomes effective.

Application of the Prudential Principle in the Management of Overseas Debt of Non-bank Corporations

by Athalia Devina

Bank Indonesia ("**BI**") has enacted Regulation of BI No. 16/20/PBI/2014 of 2014, entitled Application of the Prudential Principle in the Management of Overseas Debt of Non-bank Corporations ("**BI Regulation No. 16/20/PBI/2014**"). BI Regulation No. 16/20/PBI/2014 was effective from January 1, 2015.

The Prudential Principle must be applied by any non-bank corporation that has overseas debt in foreign currency. The prudential principle is included in the fulfillment of (i) hedging ratios, (ii) liquidity ratios, and (iii) credit ratings. The fulfillment of the hedging ratio must meet a minimum hedging of 25% (twenty five percent) of (i) the negative difference between assets against liabilities in foreign currency, which will be due for the next 3 (three) months from the end of the quarter and (ii) the negative difference between assets against liabilities in foreign currency, which will be due more than 3 (three) to six (6) months from the end of the quarter. Non-bank corporations that have overseas debt in foreign currency must meet a certain minimum liquidity ratio, which is 70% (seventy percent), by providing adequate foreign currency assets to foreign currency liabilities for up to 3 (three) months from the end of the quarter. Non-bank corporations with overseas debt in foreign currency must meet a credit rating at least equivalent to BB, issued by a rating agency which is recognized by a competent authority. The obligation to comply with the prudential principle is excluded for overseas debt in foreign currency which is in the form of trade credit. The obligation to meet the credit rating is also excluded for (i) overseas debt in foreign currency which is refinancing and (ii) overseas debt in foreign currency from creditor international agencies (bilateral/ multilateral) related infrastructure financing projects.

Non-bank corporations have an obligation to report to the BI regarding the prudential principle. The procedure for submission of reports and supporting documents, including the imposition of sanctions is conducted in accordance with BI Regulation regarding reports of foreign exchange flows and application of the prudential principle in the management of overseas debt of non-bank corporations. BI will monitor the com-

pliance of the non-bank corporation by conducting research into reports and/or submitted supporting documents. Bi is allowed to undertake the following actions when conducting research: (i) ask for explanations, evidence, records, and / or supporting documents, with or without involving the relevant agencies, (ii) direct examination of the corporation, and/or (iii) appointing another party to conduct the research.

Non-bank corporations that commit violations of obligations regarding the prudential principle will be subject to administrative sanctions in the form of a written warning. BI will convey information about the imposition of administrative sanctions to the relevant parties, among others, (i) the relevant creditors abroad, (ii) the Ministry of State Owned Enterprises, for State Owned Enterprises corporation, (iii) the Ministry of Finance, (iv) the Indonesian Financial Services Authority, (v) the Indonesia Stock Exchange, for public listed companies.

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