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Implementation of Land Procurement for Public Interest Development

By: Lie Yessica Susanto

On 24 April 2014, the government issued Presidential Regulation No. 40 of 2014, an amendment to Presidential Regulation No. 7 of 2012, namely, the Implementation of Land Procurement for Public Interest Development ("**Perpres 40/2014**"). Perpres 40/2014 was formulated with the aim of increasing investment to support land procurement undertaken in the context of developments in the common and public interest. In order to facilitate such land procurement, it was necessary to revise Presidential Regulation No. 70/2012 ("**Perpres 70/2012**").

Land procurement under this amended regulation aims to serve both the public interest and development by giving fair and adequate compensation to those who possess the land procurement object. The stages of land procurement for public purposes consist of planning, preparation, execution, and the delivery of results, further described in Perpres 70/2012. Two provisions have been amended in Perpres 40/2014, namely Article 120 and Article 121. The other provisions of Perpres 70/2012 still remain in effect. Article 121 Perpres 70/2012, has had a further 2 paragraphs added, paragraphs (3) and (4).

Paragraph 3 governs the operation and support costs of land procurement in the public interest made by State-Owned Enterprises/*Badan Usaha Milik N*egara ("**BUMN**"), and refers to the finance minister's regulation which implements Perpres 40/2014. Paragraph 4 also adds provisions regarding the operation and support costs of land procurement in the public interest for the development of upstream oil and gas infrastructure. The addition of these 2 paragraphs effectively provides more specific support for BUMN in the development of upstream oil and gas infrastructures and the land procurement to enable this.

There is another amendment to Article 121 of Perpres 40/2014, on small-scale land procurement. The development of infrastructure in Indonesia has encouraged the government to make further changes to Article 121 Perpres 70/2012, which originally defined small-scale land procurement as land of not more than 1 hectare in size. Perpres 40/2014 amended this to 5 hectares. Thus, procurement of land in the public interest of not more than 5 hectares can be undertaken directly by agreement between the acquiring institution and the holder of rights to the land who wishes to sell, by way of an Agreement for sale and purchase that is endorsed by both parties. This revision will increase the efficiency and efficacy of small-scale land procurement in order that parties do not have to go through the extra stages of land procurement specified in Perpres 70/2012.

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The Revocation of OJK Regulations on Share Buy-Back In Significantly Fluctuating Market Conditions

By : Anindia Kusuma

In mid-2014, Indonesia's Financial Services Authority (Otoritas Jasa Keuangan or OJK) issued a circular letter on the revocation of OJK stipulations regarding the repurchase of shares, or 'share buy-back', in 'significantly fluctuating market conditions', as referred to in OJK Regulation No. 2/POJK.04/2013. This concerned, as entitled, the Buy-Back of Shares issued by Issuers or Public Companies in the Event of Significantly Fluctuating Maket Conditions, dated 23 August 2013, as supplemented by OJK Circular Letter No. 1/SEOJK.04/2013, namely, Other Conditions constituting Signifcantly Fluctuating Market Conditions in Relation to the Buy-Back of Shares issued by Issuers or Public Companies dated, 27 August 2013 ("**the 2013 OJK Shares Buy Back Regulations**"). The circular letter was formulated since market indicators have shown that the stock trading conditions at IDX are no longer depressed and conditions are not significantly fluctuating. Economic conditions nationally and regionally also show a positive development trend.

By way of background, the OJK issued the 2013 OJK Share Buy-Back Regulations to permit publicly listed, Indonesian issuers to conduct share buy-back programmes in response to significantly fluctuating market conditions. The 2013 OJK Share Buy-Back was issued as a special regulation that can only be implemented in significantly fluctuating market conditions and is intended to provide an easier mechanism for share buy-back by publicly-listed companies. The 2013 OJK Share Buy-Back Regulations can only be applied upon the occurance of the following conditions:

a. the composite stock price index on the stock exhange dropping cumulatively by 15% or more over three consecutive exchange days; or
b. following other circumstances that OJK determine to constitute significantly fluctuating market conditions.

(those conditions defined as 'significant fluctuating market conditions').

Unlike the repurchase of shares in normal conditions pursuant to Bapepam-LK Regulation No. XI.B.2 on the Buy-Back of Shares issued by Issuers or Public Companies,

under the 2013 OJK Shares Buy Back Regulations, if there are 'significantly fluctuating market conditions', a publicily-listed Indonesian issuer may buy back its shares for a maximum 20% of the issued and paid up capital without the need to obtain prior approval from shareholders at a General Meeting.

Prior to the share buy-back, a public company must disclose details of certain requirements to the OJK and Indonesian Stock Exchange (IDX) no later than seven exchange days after the occurence of a 'significant fluctuating market condition'. The issuers or public companies may no longer be able to submit the disclosure and conduct the buy-back programme if this period has lapsed. The share buy-back can be implemented within a limited period of three months after disclosure.

The 2014 OJK circular letter regarding revocation of the 2013 OJK Share Buy-Back Regulations was effective as of 14 May 2014 and since that date issuers or public companies can no longer conduct share buy-back by using the 2013 Share Buy-Back Regulations as legal basis.

However, the issuers or public companies that have sent disclosure to OJK and IDX can resume the share buy-back until the repurchase is completed, in three months under the 2013 Share Buy-Back Regulations.

The new circular letter only revokes the 2013 OJK Share Buy-Back Regulations. Provisions relating to share buy-back are determined by Law No. 40, 2007 regarding Company Law and Bapepam-LK Regulation No. XI.B.2 on the buy-back of shares issued by issuers or public companies, are still applicable.

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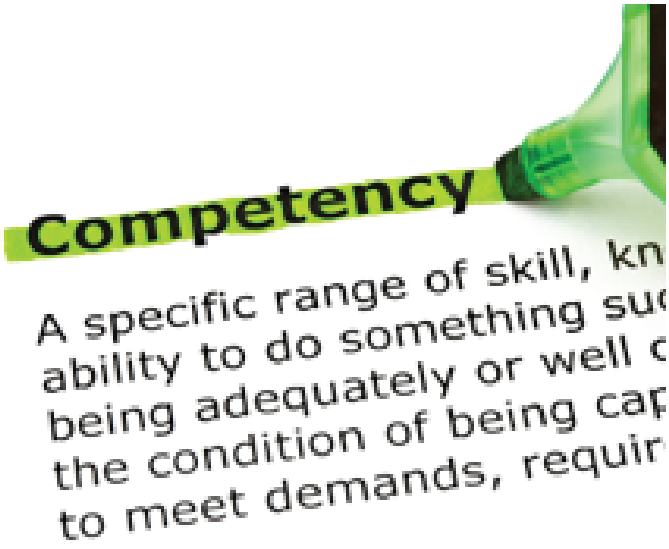
The Improvement of Employee Standard Competence to Face AFTA

By: Vinton Rasil Taris



The ASEAN Free Trade Area (AFTA) will be effectively established in 2015 in order to increase the ASEAN Region's competitive advantage as a production base geared for the world market. This objective can be achieved through the elimination of tariffs and non-tariff barriers among the ASEAN members. Whilst Indonesia faces the challenge to compete with other ASEAN members, this circumstance can be an advantage or a disadvantage to Indonesia, depending on the resilience of its economy. As we know, Indonesia has a lot of work to do to compete with other countries. Indonesia needs to improve the quality of its workers as one of many solutions to economic growth. Therefore the government is striving to improve Employee Standard Competence / Standar Kompetensi Kerja Nasional Indonesia (SKKNI)

The Indonesian Minister of Manpower and Transmigration has released the regulation of Competency Based Management Training, Number 8/2014 (Peraturan Menakertrans No. 8/2014). This regulation is mandated by the Article 3 Point B, Government Regulation Number 21 / 2006 regarding Job Training Systems, and consists of the rules, standards, procedures and criteria of Indonesian employee competence. The Article 2 Paragraph (2), Peraturan Menakertrans No. 8/2014 states that the purpose of the regulation is:

a. to enhance the synergy of training institutions' and companies' needs;
b. increase service quality and training institution performance;
c. increase employee competence.

The regulation of employee standard competence become more important if we retrace the needs of companies which demand high competence employees in the light of economic globalization.

AFTA eliminates boundaries between countries' territories and promotes integration at the same time, further enabling the free movement of products, workers, and also investment. The Indonesian minister of education and culture, Mohammad Nuh, said that there is no other way for human resources to face AFTA except improve its competency.[1] By improving SKKNI, The Minister of Manpower and Transmigration hope that the Indonesian workforce will be able to compete with other foreign workers, and also create entrepreneurs. The Director General of Training and Productivity said that they will empower educational institutions to create a competent and professional workforce. Government regulation Number 31/2006, article 4, point 1 seeks to deliver job training programs drawn up by SKKNI, based on the international standard or specific standard required by the government. In other words, the SKKNI is the reference for recruitment, placement, and employee career guidance. The government also targets the expansion of work fields and the enhancement of entrepreneurship to increase the export of local products.

Training that is determined by Peraturan Menakertrans No. 8/2014 will be held by government entities, business entities, or individuals who already fulfill the requirements to organize management training. The Minister of Manpower and Transmigration has registered 84 professional certification institutions in various sectors, such as the automotive, oil and gas, engineering, marine, fishery, food and beverage, and tourism. The issuing of this regulation will hopefully help to improve Indonesian workforce quality to compete favourably in the era of economic globalization.

[1] Minister of Education and Culture: Improve Workers Competency to Face AFTA, www.kemendikbud.go.id, March 28th, 2014

Trade of Excisable Goods

in which Excise Duty Payment is by way of Affixing Excise Ribbon or Another Excise Payment

By: Lie Yessica Susanto

In order to enhance and adapt government supervision of trade in excisable goods and its development, the government recently issued the Minister of Finance's Regulation No. 62/PMK.04/2014, concerning the Trade of Excisable Goods in which Excise Duty Payment is by way of the Affixing of Excise Ribbon or Other Excise Payment ("**Permenkeu 62/PMK.04/2014**").

Excisable goods ("**Excisable Goods**") are goods for which the payment of excise duty is made by way of affixing excise ribbon sticking tape or affixing another form of excise payment. These goods may only be offered, given, sold, or made available for sale, after the goods have been packaged for retail and excise ribbon sticking tape or another required form of excise payment has been affixed or attached. The excise ribbon sticking tape must be affixed upon the Excisable Goods in such a way that the excise ribbon attached to the Excisable Good will be broken if the packaging is opened.

Items included as Excisable Goods are set forth in the Permenkeu 62/PMK.04/2014, such as tobacco products and beverages containing ethyl alcohol. Appendix I and II of Permenkeu 62/PMK.04/2014 contains stipulations about package content amounts of tobacco that is domestically produced or imported for the domestic market. Likewise, the minimum volume of any beverage containing ethyl alcohol which is domestically produced or imported for the domestic market is limited to at least 180 ml. per package.

Article 6 Permenkeu 62/PMK.04/2014 stipulates that on Excisable Goods packaging of tobacco products for domestic retail, the following information should be included in clear and easily legible, permanent print : the tobacco brand, the type of tobacco products, the amount and contents of packaged tobacco products, the name of the factory/importers, the locations of the factory/importers, as well as warnings and health information.

Likewise, for packaging of beverages containing ethyl alcohol for domestic retail, the following information must be included in clear and easily legible, permanent print : brands and type of beverages containing ethyl alcohol, factory or importer name, location of factories/importers, the volume of packaged beverages containing ethyl alcohol, ethyl alcohol levels in the beverages.

Furthermore, Article 7 Permenkeu 62/PMK.04/2014 specifies the packaging requirements for Excisable Goods for retail abroad. Basically, the specified requirements for both tobacco products and beverages containing ethyl alcohol, are the same as the packaging requirements for Excisable Goods for domestic retail. The only difference is that the words "FOR EXPORT ONLY" must be added to the package text.

Restrictions on Excisable Goods packaging specifically for domestic retail are set forth in Article 9 Permenkeu 62/PMK.04/2014, i.e. the following text on any packaging is prohibited:

a. quotations from religious scriptures;
b. religious symbols;
c. words or images that are contrary to the applicable laws, religion morality, decency, or public order; or
d. names and/or pictures of the person or legal entity without permission of the individual or legal entity mentioned.

Sanction for violation of the Permenkeu 62/PMK.04/2014 as regulated by Article 11 Permenkeu 62/PMK.04/2014 is the revocation of the excise tariff by the head office on behalf of the Minister of Finance. Article 12 stipulates that the adjustment period for the Excisable Goods sellers to remedy the violation is 6 months from the enactment of Permenkeu 62/PMK.04/2014. Permenkeu 62/PMK.04/2014 came into effect 30 days from 8th April 2014.

With the enactment of Permenkeu 62/PMK.04/2014, the Minister of Finance Regulation No. 236/PMK.04/2009 on Excisable Goods Trade, is revoked and declared invalid.

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Labour and Rest Time in Upstream Oil and Gas Employment

By: Lie Yessica Susanto

On 10 March 2014, the Minister of Manpower and Transmigration introduced the Regulation of the Minister of Manpower and Transmigration No. 4 of 2014 on Labour and Rest Time In Upstream Oil and Gas Employment ("**Permenakertrans 4/2014**").

Permenakertrans 4/2014 was specifically set up to protect the rights of workers employed in upstream oil and gas activities. This is because upstream oil and gas activities are considered to have their own specific characteristics and are influenced by natural and geographic conditions.

Article 2 Permenakertrans 4/2014 also determines working and resting time in accordance with company operation as follows:

a. 6 days per week working time and 1 day per week resting time, with shifts of 7 hours per day in a 40-hour week;
b. 5 days per week working time and 2 days per week resting time, with shifts of 8 hours per day in a 40-hour week; and
c. A maximum of 28 consecutive working days with a minimum ratio of working and resting time of 2:1 in any one shift.

Adherence to working and resting times is stipulated in employment agreements, company regulations or collective labour agreements and must accord with the working and resting times that have already been selected by the company. If the company hires its employees to work overtime as defined in Article 2, the company is obliged to pay overtime wages in accordance with the calculation specified in Article 5 Permenakertrans 4/2014. The company is also required to have a list of wages and overtime pay of every worker/labourer.

In the case of companies which choose to hire employees with a maximum working time of 28 consecutive days, the longest shift specified is 11 hours per day, plus a rest period of at least 1 hour in addition. Moreover, the company must also consider the specific provision of Article 4 Permenakertrans 4/2014 regarding overtime pay for employees who work for 28 consecutive days.

The company can also make changes and/or adjustments to working and resting time periods in accordance with the option stipulated in Article 2. However, the company must give advance notice to the workers/labourers at least 30 days before the date that any changes are implemented.

Furthermore, Article 8 Permenakertrans 4/2014 also specifies particular positions for workers/labourers which are not entitled to overtime pay. The 'particular positions' in this case means those who have the responsibility as thinkers, planners, implementers, and controllers who run the company and whose working time cannot be limited by the company in the company regulations/collective labour agreements. This is because the shifts of those categorized as having 'particular positions' receive higher wages than workers/labourers who are entitled to overtime pay.

To monitor the compliance of a company in carrying out Permenakertrans 4/2014, the company has an obligation to report on their implementation, including on any changes, periodically - every 3 months., The report is for the institutions responsible for the manpower sector at regency/municipality level, with copies going to the institutions responsible for the manpower sector at the provincial/ministerial level. The report must include:

a. working and resting time or periods of work that are selected and specified by the company; and
b. the numbers of workers/labourers assigned in the selected period.

In case of any discrepancy in the calculation of overtime wages, labour inspectors at the district/city, province, or ministry can determine the amount of overtime wages in accordance with the mechanism stipulated in Article 9-10 Permenakertrans 4/2014. In addition, Article 13 also regulates supervision by labour inspectors at the institutions responsible for the manpower sector. Permenakertrans 4/2014 came into force on 10 March 2014.

Engineering Law Updated

By: Lie Yessica Susanto

Like doctors and lawyers, engineers are also regarded as one of the professions which makes a major contribution to development. Therefore, in order to provide protection to the public and to improve the quality of professional engineers, the government has issued a specific law regulating engineers, namely Law Number 11,2014 concerning Engineering ("**UU 11/2014**"). UU 11/2014 has been in effect since 24 March 2014.

An engineer is defined under UU 11/2014 as someone who has a degree in engineering. The scope of engineering in Article 5, Law 11/2014, encompasses engineering disciplines such as: industry, conservation and management of natural resources, marine and shipbuilding technology, and so forth. To ensure the professional quality and competence of professional services engineers, UU 11/2014 also stipulates engineering standards, consisting of: the service engineering standard, engineering competence standard, and professional programs engineering standard. Moreover, every engineer who practises engineering in Indonesia must have an engineer's registration letter issued by the Indonesian Engineers Association/Persatuan Insinyur Indonesia ("**PII**"). The engineer's registration letter is valid for 5 years and can be re-registered after the engineer has fulfilled the requirements specified, including participation in a sustainable professionalism program, as stipulated in Article 23 UU 11/2014. Before acquiring the registration letter, engineers must obtain a certificate of competence, obtainable after the engineer has passed the competency test.

Article 18-22 UU 11/2014 also regulates foreign engineers practising in Indonesia. Foreign engineers must have a work permit and to obtain it, the foreign engineer must first obtain an engineer's registration letter issued by PII, based on a registered engineering license/certificate of competence according to their own state law. In terms of foreign engineers who do not have such a registered engineering license/certificate of competence, the foreign engineer must comply with the requirements for obtaining an engineer's registration letter issued by PII. These are stipulated in Article 10-17 UU 11/2014 and its implementing regulations.

In case of any violation of UU 11/2014, there are administrative sanctions imposed on engineers in the form

of: written warnings, fines, suspension of engineering activities, suspension or revocation of engineers registration letters (Article 15-16 UU 11/2014). Meanwhile there are also administrative sanctions for foreign engineers which are stipulated separately in Article 21 paragraph (2) UU 11/2014, as follows: written warnings, suspension of engineering activities, suspension or revocation of working licenses, fines, and others.

Besides the administrative sanctions, there are also penal sanctions stipulated in Article 51 UU 11/2014 which are imposed on any person who is not an engineer but running an engineering practice and 'holding themselves out' as being an engineer. Penal sanctions are also imposed on engineers and foreign engineers who do not carry out their profession in accordance with engineering standards.

Furthermore, Article 52 UU 11/2014 also stipulates that any person who obtained a degree in engineering before UU 11/2014 came into force, remains entitled to use the title. Every engineer who has not been certified in accordance with UU 11/2014 is given 3 years to comply with UU 11/2014.

Minimum Services Standard of Employment

By: Lie Yessica Susanto

On February 12, 2014, the Minister of Manpower and Transmigration issued Minister of Manpower Regulation No. 2, 2014, entitled Minimum Services Standard of Employment ("**Permenakertrans 2/2014**").

The Minimum Services Standard of Employment/ *Standar Pelayanan Minimal Ketenagakerjaan* ("**SPM**") is defined as the provision of the type and quality of basic services in all fields of employment. This is obligatory in each area and constitutes the minimum standard to which each citizen is entitled. (Article 1 Permenakertrans 2/2014).

The scope of SPM is regulated in Article 2 paragraph (2) Permenakertrans 2/2014 and includes the type of basic services, indicators, values, achievement deadlines, and the institution responsible for their delivery. This SPM is also a reference point for the government to prepare for local government budgeting.

The parties responsible for the implementation of SPM are the Governor and Regent/Mayor. The provincial departments and regency/municipality departments are operationally coordinated. Beside that, there is a monitoring and evaluating process, and also development and supervision that is conducted by the Minister responsible for the achievement of the SPM at the provincial level, and by the Governor at the regency/ municipality level.

The result of monitoring and evaluation can be used as a capacity development indicator. Capacity development may include general orientation, technical guidance, technical assistance, and other aid. With the enactment of Permenakertrans 2/2014, the Regulation of the Minister of Manpower and Transmigration No. PER.15/MEN/X/2010 and Regulation of the Minister of Manpower and Transmigration No. PER.04/MEN/IV/2011 has been revoked and declared invalid.

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