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Public Services Enhancement in the Indonesian Ministry of Trade

by Vinto Rasil Taris

The Indonesian Ministry Of Trade has issued Regulation No. 53/M-DAG/PER/9/2014 regarding an Integrated Trade Service (Permendag No. 53/2014), with the purpose of increasing the quality and existence of public services. Integrated Trade Service consists of a series of operational activities involving the licensing services and non-licensing services of the Indonesian Ministry of Trade, and is provided by an integrated system. Accordingly, there are two lines of services that will be held by the Ministry of Trade - licensing services and non-licensing services.

Licensing services are for the provision of business licenses in trading sectors, such as for acknowledgment, designation, determination, authorization, and registration. Non-licensing services exist to serve the public by providing information, consultancy, and other services, except for licensing. The scope of trade services stipulated under Permendag No. 53/2014 is limited to domestic trading, standardization and consumer protection, foreign trading, and commodity futures trading (Article 2 Permendag 53/2014). The online trade service system - called INATRADE - is also presented in such way that the public can easily access these services online.

The online system stipulates a Mandatory Online method, which entails that some services must be applied for online. From 163 license and 8 non-license services available, 35 export and import licenses can be processed online and completed in the Integrated Trade Service Unit (Unit Pelayanan Terpadu Perdagangan / UPTP). The other 61 export and import licenses are applied for online but their issuance is controlled by the UPTP. The rest of the licenses are processed both online and manually by the unit, but mandated by the UPTP: these consist of 10 standardization and consumer protection licenses (standardisasi dan perlindungan konsumen / SPK), and 8 non-licensed SPK, 22 Indonesian Commodities Exchange Agency licenses, 9 export licenses, and 12 import licenses. The online license application process consists of 14 steps based on Permendag 53/2014: briefly, it starts with an INATRADE login, followed by online application form-filling and form and supporting document verification, after which the license may be issued to the applicant by the UPTP.

Permendag 53/2014 will be effective from December 2014, and this regulation will supersede and enhance existing regulations regarding the Trade Service Unit: the Delegation of the License Issuing Service Authority to Coordinator Unit and Trade Executor; types of Export and Import Licenses, Standard Operating Procedures, and Service Level Arrangements with Electronic Systems through Inatrade in the scope of a 'National Single Window'. The issuing Permendag 53/2014 will help the businessperson to obtain export, import and other licenses in the scope of trade more easily, due to the short time it will now take for the license to be processed. In addition, the entrepreneur also cuts down on the cost of license application, and more importantly, INATRADE enables applicants to monitor the licensing process online, thus assuring transparency.

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New Era of Plantation Law

by Arselan

The House of Representatives approved the bill of a new plantation law (the "**New Plantation Law**") on 29 September 2014. Although the final draft has been approved by the Indonesian Parliament, the New Plantation Law has yet to be numbered and officially issued by the government of the Republic of Indonesia. The official enactment of the New Plantation Law is pending only the completion of some administration processes. The final draft published is unlikely to be changed.

The crucial point to note is the issue of foreign investment ownership in a plantation company. This issue has been discuss intensively amongst the government and major plantation business players. Before the final draft of the New Plantation Law is issued, requests or calls to limit foreign ownership in a plantation business up to only 30% (thirty percent) had to be considered. In fact, the final draft that was approved by the Indonesia Parliament on 29 September 2014 does not contain with any restriction of foreign ownership in plantation business. However, the New Plantation Law states that the development of the plantation industry in Indonesia will prioritize domestic investment instead of foreign investment. Foreign investment in a plantation business will be limited, based on certain parameters such as type of plant, business scale and the condition of the area in which the plantation business is conducted. Details of the restriction or maximum percentages of shares that can be owned by foreign investors in a plantation company will be governed by the Government Regulation (*Peraturan Pemerintah*). The New Plantation Law requires the government to issue the implementation regulation (in this case the Peraturan Pemerintah) within 2 (two) years of the enactment date.

As the New Plantation does not explicitly stipulate restriction of foreign investment in the plantation industry, the maximum percentage of shares that can be owned by foreign investors in a plantation company is, for the time being, still being regulated by investment laws. According to the new Negative Investment List under Presidential Regulation (*Peraturan Presiden*) No. 39 of 2014, in the List of Business Fields that are Conditionally Open for Investment ("**Reg 39/2014**") the maximum shareholding that can be held by a foreign investor is up to 95% (ninety five percent). As long as the Peraturan Pemerintah is yet to be issued, Reg 39/2014 remains applicable. If the government issues the Peraturan Pemerintah which (based on the hierarchy of Indonesian legislation) has a higher position than the Peraturan Presiden, the Peraturan Pemerintah will supersede the Peraturan Presiden.

Another point to note is the time limit given in the New Plantation Law for planting in plantation areas. A plantation company is obliged to plant 30% (thirty percent) of the total land area owned by it within 3 years of the issuance of its land rights. Within a maximum of 6 (six) years after the issuance of its land rights, a plantation company must plant all of its land areas. Failing the fulfilment this time limit requirement, the land areas that are yet to be planted can (ultimately) be expropriated by the state.

The transition provisions are governed by Clause 114 of the New Plantation Law. A plantation company that has yet to obtain a plantation business licence (*izin usaha perkebunan*), must obtain it within 1 year of the enactment of this New Plantation Law. The New Plantation Law also states that a plantation company that has obtained or held an izin usaha perkebunan before the issuance of the New Plantation Law, is given a 5 (five) year time limit to adjust to the requirements of the New Plantation Law. With specific regard to the foreign investment issue, the requirements under the New Plantation Law apply after the expiry of a land right. The transition provisions indicate that the New Plantation Law does not apply retroactively.

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Receipt of Export Proceeds and Withdrawal of Foreign Exchange from External Debt

by Rio Rahmat Hidayat

Bank Indonesia's Governor issued Regulation No. 16/ 10/PBI/2014 regarding the Receipt of Export Proceeds and Withdrawal of Foreign Exchange from External Debt ("**PBI Regulation No. 16/10/PBI/2014**") on May 14, 2014, revoking PBI Regulation No. 14/25/PBI/2012. Matters set forth in the regulation are:

The Foreign Exchange Receipt of Export Proceeds (DHE) obliged through a Foreign Exchange Bank.

The entire DHE must now be received through a Foreign Exchange Bank no later than the end of the third month after the month of Export Declaration Enrollment (PEB), with the exception of (i) Government owned DHE received through Bank Indonesia (BI); or (ii) DHE received in the form of cash in the country can be proven by adequate supporting documents.

Referring to Article 10, Exporters will be deemed not to have fulfilled their obligations in respect of DHE reporting procedure if they do not submit supporting documents, statements, letters and/or evidence of netting transactions for:

1. acceptance of DHE in the form of cash in the country (for PEB is greater than USD 10,000.-);
2. acceptance of DHE derived from the method of payment such as usance letter of credit (L/C), consignment, future payment, collection, with maturities exceeding or equal to 3 months after the month of PEB enrollment;
3. the gap in value between DHE and PEB is greater than the equivalent of Rp 50,000,000.- as a result of (a) foreign exchange, discounts/rebates, administrative fees, and/or other costs related to international trade, (b) reparation fees, operational leasing or financial leasing, price differences, quality, composition and quantity of goods;
4. the gap in value between DHE and PEB for mining products is greater than 10% the value of the PEB;
5. the gap in value between DHE and PEB is greater than the equivalent of Rp 50,000,000.- (for exporters who have received DHE through Foreign Exchange Banks or in cash, or exporters who have not received DHE) as a result of importer defaults, bankruptcy or force majeure;
6. acceptance of DHE derived from the results of netting.

DHE regulatory compliance obligations are the responsibility of the owner of the goods if the export is done through the courier service company (PJT) and in terms of oil and gas export activities, the responsibility is that of the parties to any cooperation agreement in oil and gas.

Obligation of Foreign Exchange Debt Withdrawal (DULN) through a Foreign Exchange Bank.

Every DULN must be withdrawn by the debtors through a foreign exchange bank and reported their DULN to Bank Indonesia, in the case of every DULN that originates from:

1. foreign debt (ULN) based on a loan agreement in a non-revolving form that is not used for refinancing;
2. a gap in value between the refinancing facility and the old ULN; and
3. ULN based on debt securities in the form of Bonds, Medium Term Notes (MTN), Floating Rate Notes (FRN), Promissory Notes (PN), and the Commercial Paper (CP).

The DULN withdrawal accumulation value must be equal to the commitment value. In the event that there is a gap which is at most equivalent to Rp 50,000,000.-, the DULN is considered in accordance with the commitment and the ULN debtor does not have to submit a written explanation and supporting documents. If otherwise, the gap value is greater than the equivalent to Rp 50,000,000.- ULN debtor must submit a written explanation and supporting documents to Bank Indonesia no later than the expiration of the external debt.

Sanctions

1. Exporters violating the obligations concerning DHE acceptance shall receive an administration fine of 0.5% of the nominal value of the DHE that has not yet been received, to a maximum amount of Rp 100,000,000.- for one month of PEB enrollment.
2. A penalty fine of 0.25% for each nominal value of DULN withdrawal that was not through foreign banks, with a maximum fine of Rp 50,000,000.-.

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New Hope of Geothermal Energy

By: Ignatia Oktavia Simorangkir

Geothermal energy is environment-friendly energy because its utilization has only a minor impact on the environment. The government introduced the utilization of geothermal energy by way of Law No. 27,2003 Concerning Geothermal Energy ("**Law No. 27/2003**"), but unfortunately, this Law was unable to respond to the challenge to develop the utilization of geothermal energy. This is because under Law No. 27, 2003, 'geothermal' pertains to mining activity, whereas most of the sources of geothermal energy in Indonesia are situated in remote locations and in Conservation Forest Areas. As a result, the utilization of geothermal energy could not be conducted because mining activity in Conservation Forest Areas is inconsistent with Law No. 5, 1990, Concerning Conservation of Biological Natural Resources and their Ecosystem, and Government Regulation in Lieu of Law No. 1, 2004, Concerning the Amendment of Law No. 41, 1999 on Forestry.

To optimize the utilization of geothermal sources for national energy provision, the government issued Law No. 21, 2014 Concerning Geothermal Energy ("**Law No. 21/2014**"), replacing Law No. 27/2003. Law No. 21, 2014 was ratified and came into force on September 17, 2014. This new law consisting of 12 chapters and 88 articles, provides comprehensive regulation on the establishment of geothermal energy, direct and indirect utilization of geothermal sources, use of land, rights and obligations, data and information, direction and supervision, and public participation.

The term "**Mining Business License**" in Law No. 27, 2003 has been replaced with the term "**Direct Use License**" and "**Geothermal License**". A Direct Use License is granted for the direct utilization of geothermal energy which must be conducted for the purpose of tourism, agribusiness, industry, and other geothermal-based activities, whilst, a Geothermal License is granted for the indirect utilization of geothermal energy which must be conducted for private or public power generation.

Further, a Geothermal License must be held by a business entity engaged in the indirect utilization of geothermal energy before conducting any explorations, exploitation, and utilization. A Geothermal License may not be transferred to another entity. If the business entity is a public company, the transfer of shareholdings may be conducted only after the completion of explorations and approval from the Minister. A Geothermal License will be valid for no longer than 37 (thirty seven) years and may be renewed for no longer than 20 (twenty) years for each renewal.

Law No 21, 2014 clearly distributes authority between Central Government, Provincial Government, and Regency/City Government. The Central Government has the authority to establish direct utilization of geothermal energy which takes place I) where the location overlaps the boundaries of the provinces, including Production Forest Areas and Protected Forest Areas; ii) in Conservation Forest Areas; iii) in Water Conservation Areas; and iv) in Territorial Seas exceeding 12 (twelve) miles from the baselines to the high seas throughout Indonesia, and to establish indirect utilization of geothermal energy throughout the territories of Indonesia, including Production Forest Areas, Protected Forest Areas, Conservation Forest Areas, and Territorial Seas. The Provincial Government has the authority to establish direct utilization of geothermal energy which takes place i) where the location overlaps the boundaries of the regency/city in one province, including Production Forest Areas and Protected Forest Areas; and ii) in Territorial Seas not exceeding 12 (twelve) miles from the baselines to the high seas and/or to archipelagic waters. The Regency/City Government has the authority to establish direct utilization of geothermal energy which takes place i) in regency/city territories, including Production Forest Areas and Protected Forest Areas; and ii) in Territorial Seas not exceeding 1/3 (one-third) of the territorial sea over which a province has jurisdiction.

Regional government is increasingly benefited by Law No. 21,2014. Referring to Article 53 Paragraph (1) Law No 21,2014, the holder of the Geothermal License must give production bonuses to the Regional Government with administrative jurisdiction over the working areas of geothermal business. Beside the production bonuses, the holder of a Geothermal License must also fulfill obligations to pay state and regional income. State income consists of tax revenues, fixed fees, production royalties, and other state collections under the laws and regulations. Regional income consists of regional taxes, regional charges, and other lawful income under the laws and regulations. Moreover, to reinforce compliance with Law No. 21, 2014, violations against the provisions of Law No. 21,2014 may be subject to administrative and criminal sanctions. Previously, Law No. 27, 2003 provided penal provisions only under 6 (six) articles, but now under Law No 21, 2014 it is regulated by 11 articles.

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