



# Due Diligence and Import Declaration Filing on Forest Products

by Melisa Kristian



The Director General of Sustainable Production Forest Management recently issued Regulation No. P.3/PHPL/PPHH/HPL/3/11/2018 concerning Procedures of Due Diligence and Import Declaration Filing on Forest Products (“**Regulation**”), repealing Regulation No. P.7/PHPL-SET/2015 concerning Guidelines on Due Diligence, Import Declaration Issuance, and Forest Product Import Recommendation. This regulation was issued to implement Article 3 of Minister of Trade Regulation No. 97/M-DAG/PER/11/2015, as recently amended by Minister of Trade Regulation No. 13 of 2018. The article requires every forest product import to satisfy the legality of forest products set forth by the ministry in authority pursuant to the provisions of laws and regulations.

Due diligence on forest product imports shall only be conducted by Producer Importer Identification Number (*Angka Pengenal Importir Produsen* or “**API-P**”) holder importers, or General Importer Identification Number (*Angka Pengenal Importir Umum* or “**API-U**”) holder importers.

Due diligence activity includes:

- 1) information and data gathering and collecting relating to the legality of exporter, producer and the imported product. Information related to product legality may be satisfied provided the imported product has fulfilled certain requirements, such as having been certified by a certification body, originating from countries with Mutual Recognition Agreement (MRA) with Indonesia, and so on;
- 2) risk analysis, intended by importers to avoid forest products which are illegally logged/harvested or traded, and/or if any fraud or information concealment has been committed prior to product importation; and
- 3) risk mitigation, conducted by importers to ensure the reliability and accuracy of information utilized in risk analysis to make sure no fraud or information concealment has been committed.

Due diligence is conducted electronically through the SILK Portal ([silk.dephut.go.id](http://silk.dephut.go.id)). Prior to conducting the activity, API-P or API-U holder importers must have an access right to the SILK Portal obtained by filing a request electronically as well. Access rights are obtained only after the requirements set out by the regulation are fulfilled.

Subsequent to Due Diligence, importers are obliged to file Import Declaration electronically through the SILK Portal ([silk.dephut.go.id](http://silk.dephut.go.id)) based on the results from Due Diligence which has been conducted thoroughly and correctly. API-P holder importers may only import forest products which will be utilized as raw and/or auxiliary materials to support self-producing processes in accordance with existing industrial licences, whereas API-U holder importers may import forest products intended to be traded and/or transferred to other parties. API-U holder importers may not conduct any production process, as opposed to the activities API-P holder importers may perform. However, both API-P and API-U holder importers are obliged to convey a Supplier’s Declaration of Conformity (*Deklarasi Keseuaian Pemasok* or “**DPK**”) to their buyers.

Further, import activities will be audited by Timber Legality Assurance Body (*Lembaga Verifikasi Legalitas Kayu* or “**LVLK**”). To perform auditing activity, importers must provide information and data from due diligence. LVLK will perform a cross check by comparing the documents provided by the importers to due diligence data on the SILK portal. Auditing activity may also be performed anytime by other governmental bodies and/or parties appointed by the government. Furthermore, importers are obliged to submit a monthly report on forest product import realization through the SILK Portal no later than the 15<sup>th</sup> day of the following month.

Sample importing not intended for trading must be accompanied by an Import Declaration. The Import Declaration is also filed through the SILK Portal. Data and information required at the least include data and information related to exporter legality and the sample products (including product description, HS Code, amount, mass, and price). Importers must disclose invoices, packing lists and photographs of the products, and a statement declaring the non-trading of sample products from importers and exporters.

Timber Legality Certification (*Sertifikat Legalitas Kayu* or “**SLK**”) holder importers are subject to direction, supervision, and control performed by the mandated director. In the event of violation, the mandated director will propose sanctions on the importers to the Director General in accordance with the applicable laws and regulations, such as SLK repeal.

# New Regulation on Recruitment of Foreign Workers

by Alexander Josua Hutagalung



On 29 March 2017, Joko Widodo, President of The Republic of Indonesia issued regulations related to foreign workers, i.e., Regulation of The President of The Republic of Indonesia No. 20 of 2018 (“**Regulation No. 20/2018**”) concerning Recruitment of Foreign Workers in the interests of supporting the national economy and providing more employment opportunities through investment. To this end, the Indonesian Government considers it necessary to re-regulate the permit for the use of foreign workers.

Regulation No. 20/2018 sets out that any employer which uses foreign workers should have a Foreign Workers Recruitment Plan (Rencana Penggunaan Tenaga Kerja Asing) referred to as (“**RPTKA**”), which has been validated by Minister or appointed official and contains at least the following: (a) reason for foreign workers recruitment; (b) position of foreign workers in the relevant company organization structure; (c) period of foreign recruitment; and (d) appointment of Indonesian workers to assist the recruited foreign workers. Validation of RPTKA is granted by the Minister or the appointed official within 2 (two) days at the latest after the application submitted is received.

The aforementioned RPTKA constitutes a permit to recruit foreign workers which will be valid in accordance with the period for the foreign workers recruitment plan by employers of foreign workers. However, there are exceptions for employers of foreign workers not obliged to possess RPTKA in order to recruit foreign workers who are: (a) shareholders who serve as members of the Board of Directors or Board of Commissioners in the company employing foreign workers; (b) diplomatic and consular staff in a foreign embassy; or foreign workers who are recruited for the type of works which are required by government.

There are obligations for every employer of foreign workers, i.e.: (a) appoint Indonesian workers as understudy workers; (b) implement education and training for Indonesian workers in accordance with the qualifications for positions which are occupied by foreign workers; and (c) facilitate education and training in the Indonesian language for foreign workers. The employer of foreign workers also must report on the implementation of foreign workers recruitment on an annual basis to the Minister which consists of i.e.: (a) implementation of foreign workers recruitment; and implementation of education and training for understudy workers.

# Tourism Business Enterprises

by Budi Wibowo



On 13 March 2018 the Governor of DKI Jakarta issued a Regulation on Tourism Business Enterprises which consists of 61 Articles. There are 13 varieties of tourism business within these 61 Articles, such as tourism area, tour transportation, food and beverages, accommodation, tourism information, tourism consultation, etc. Those 13 varieties are obliged to apply for their business licence called the Tourism Business Licence or commonly abbreviated as TDUP. As we read and understand this regulation more deeply, we will see that it sets out the differing business hours for the various leisure activities, such as golf sport recreation from 05:00 to 18:00 and night clubs from 20:00 to 02:00, which may be extended to 03:00 on weekends, and spas (*solus per aqua*) from 10:00 to 23:00, etc.

Further provisions of this Article govern corporate social responsibility for tourism business, sanctions that are applicable under this regulation, special sanctions related to narcotics and rewards for tourism business enterprises. The aforementioned, corporate social responsibility as set out in Article 43 of this regulation includes education, social, cultural and economic aspects, the physical environment, disaster management, prevention of the distribution, sale and usage of narcotics and/or other psychotropic drugs, prevention of immoral

behaviour and/or prostitution, and prevention of gambling. This corporate social responsibility is the obligation of every TDUP holder, whereby whosoever neglects these obligations shall be subjected to administrative sanctions.

The administrative sanctions under this regulation shall be imposed according to the following steps: (i) first warning letter; (ii) second warning letter; (iii) third warning letter; (iv) temporary termination of business activities; and (v) revocation of TDUP and permanent termination of business activities. But, in the event where the TDUP holder breaches any provision related to narcotics, prostitutions and gambling, the authorities may take direct steps towards the revocation of TDUP and permanent termination of business activities. In addition, pursuant to the aforementioned sanction, business enterprises who receive such punishment may also be banned from re-creating other tourism business enterprises.

Aside from these sanctions, this regulation also provides for business enterprises to achieve a reward called "Adikarya Wisata" from the Governor for tourism business enterprises who are dedicated to contributing to the tourism business field.